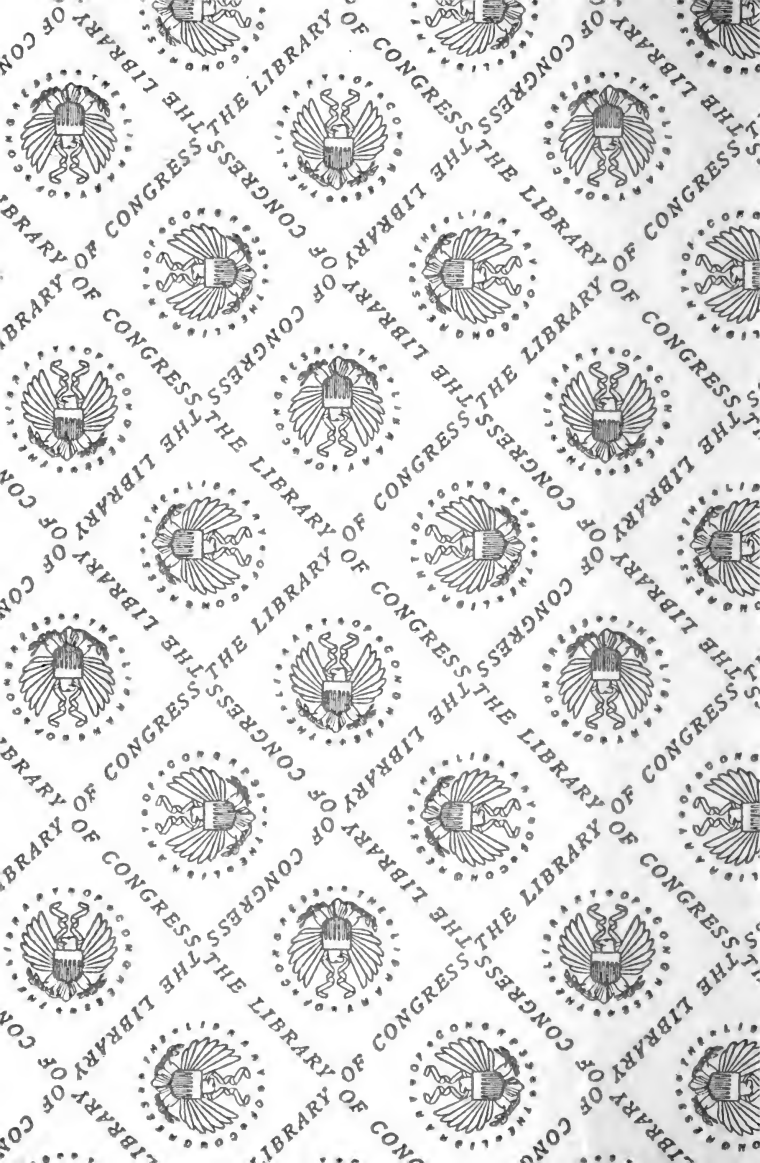
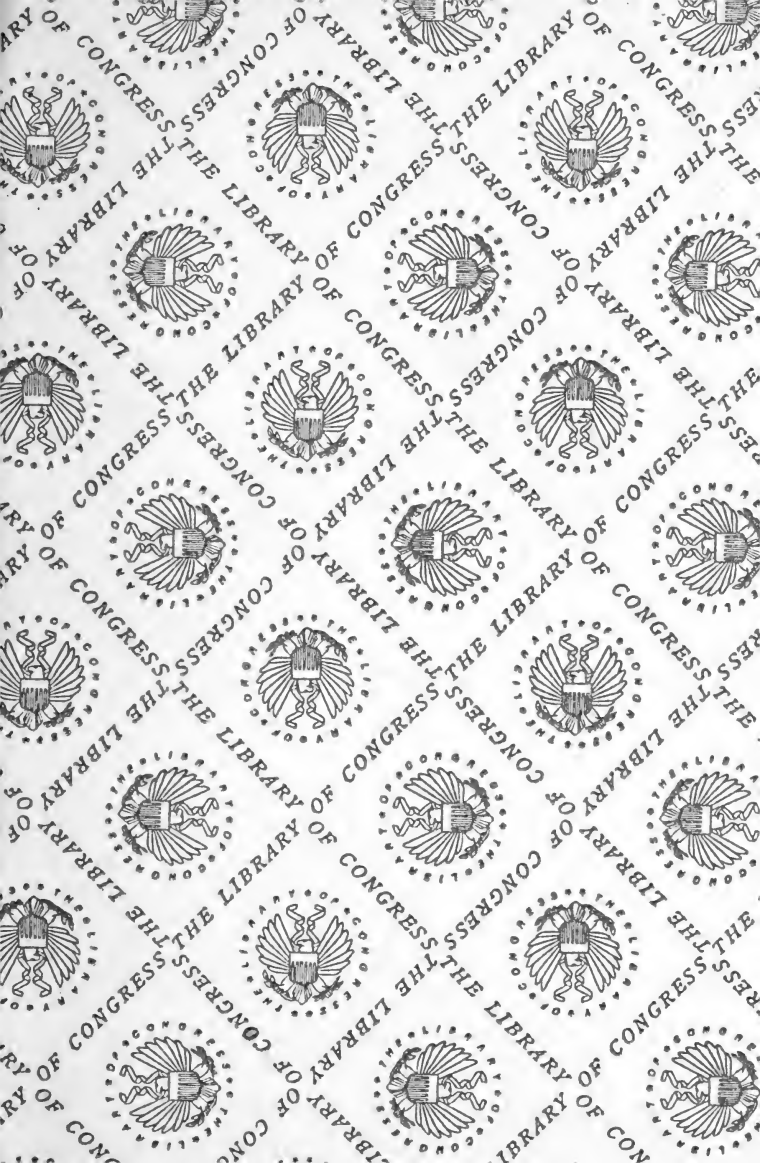


LB 2529

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1884





—✻ IOWA ✻—

SCHOOL LAWS.

TEACHERS' AND OFFICERS' EDITION,

WITH

Official Notes, Decisions and Forms; Digest of Supreme Court Decisions and Attorney General's Opinions.

FULLY INDEXED WITH APPENDIX.

COMPILED BY

ED M. RANDS.

CHICAGO:

NORTHWESTERN SCHOOL SUPPLY COMPANY, PUBLISHERS.

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CITY OF CHICAGO

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1884



DEDICATED

To my fellow Teachers and School Officers in the State, who have long sought light, this Book is fraternally dedicated, with the wish that it may aid them and lighten their burdens.

Ed. M. Rands.

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PREFACE.



MAKE perfect the law, for wrongs will be done under the best laws, and greater ones under those not clearly understood. Teachers and School Officers have felt the necessity for a better knowledge of the Law, and lawyers have held themselves aloof from any connection with suits involving questions of School Law. Since, to simplify the Law is not possible, it only remains to explain those parts that are shrouded in doubt.

This Book contains a great deal of matter that has never before appeared in print, having been locked in the archives of the State Departments. This matter covers the entire range of School Law, being the gist of the interpretations and explanations of judicial officers, who have had to do with the deciding of test cases.

In the selection and arrangement of the matter herein contained, care has been taken to present only such as clearly tends to simplify the Law.

The Department Notes have not the force of law. yet serve as a safe guide. The Supreme Court decisions and the Attorney General's opinions, being the interpretations of law, have nearly the force of the law itself. The Appendix affords a concise statement of the force of law in general, on the most important points, and will be found of great value. The Index will be found a means of ready reference. The Notes are not indexed as they can be referred to by section, in connection with the body of the law.

THE PUBLISHERS.

CHICAGO, ILL., September 1, 1884.

R. M. H. Dec. 15/17



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SCHOOL LAWS OF IOWA.

*From The Code As Amended By The Fifteenth,
Sixteenth, Seventeenth, Eighteenth, Nine-
teenth and Twentieth General
Assemblies.*

SCHOOL DISTRICTS.

SECTION 1713. Each civil township now or hereafter organized, and each independent school district organized as such prior to the taking effect of this code, is hereby declared a school district for all the purposes of this chapter, subject to the provisions hereinafter made.

SEC. 1714. When an organized district has been left without officers, the township trustees shall give such notice for a special election of directors as is required in cases of regular district elections; and the persons elected shall continue in office until their successors are duly elected and qualified.—41 Iowa, 30; 53 Iowa, 663; 53 Iowa, 667.

SEC. 1715. When changes in civil township boundaries are made, or any district shall be divided into two or more entire townships for civil purposes, the existing board of directors shall continue to act for both or all the new districts, or parts of districts, until the next regular district election thereafter, at which time the new district townships shall organize by the election of directors. The respective boards of directors shall, immediately after such organization, make an equitable division of the then existing assets and liabilities between the old and new districts; and in case of a failure to agree, the matter may be decided by arbitrators, chosen by the parties in interest. A similar division shall be made in

case of the formation or changes of boundaries of independent districts.—43 *Iowa*, 444 ; 41 *Iowa*, 321 ; 36 *Iowa*, 216 ; 45 *Iowa*, 104 and 391 ; 54 *Iowa*, 286 ; 45 *Iowa*, 391 ; 17 *Iowa*, 16 ; 37 *Iowa*, 542.

SEC. 1716. Every school district which is now, or may hereafter be organized, is hereby made a body corporate by the name of the “district township,” or “independent district,” (as the case may be,) of in the county of , and in that name may hold property, become a party to suits and contracts, and do other corporate acts.

DISTRICT TOWNSHIP MEETING.

SEC. 1717. (As amended by Chap. 51, Laws of 1882.) Each district township shall hold an annual meeting on the second Monday in March, and the electors of the district, when legally assembled at such meeting, shall have the following powers :

1. To appoint a chairman and secretary, in the absence of the regular officers ;

2. To direct the sale or other disposition to be made of any school-house, or the site thereof, and of such other property, personal and real, as may belong to the district ; to direct the manner in which the proceeds arising therefrom shall be applied ; to determine what additional branches shall be taught in the schools of the district ; or to delegate any of these powers to the board of directors ; “and to authorize the board of directors to obtain, at the expense of the district township, such highways as such board may deem necessary for proper access to the school-houses in their districts.”

3. To vote such tax, not exceeding ten mills on the dollar in any one year, on the taxable property of the district township, as the meeting shall deem sufficient

for the purchase of grounds and the construction of the necessary school-houses, for the use of the district, and for the payment of any debts contracted for the erection of school-houses, and for procuring district libraries, "and for obtaining highways for access to school-houses."

4. To instruct the board of directors to transfer any surplus in the school-house fund, not appropriated, to either the contingent or teachers' fund.—35 *Iowa*, 194; 50 *Iowa*, 648; 55 *Iowa*, 606; 44 *Iowa*, 564; 50 *Iowa*, 11; 35 *Iowa*, 104; 41 *Iowa*, 153; 25 *Iowa*, 436; 28 *Iowa*, 332; 25 *Iowa*, 448; 47 *Iowa*, 11.

SEC. 1717½. (Chap. 84 Laws of 1880.) When a school district, by fire or otherwise, has been deprived of a school building, and the board of directors of such district by the use of the powers in them vested, are unable to provide for the continuance of the school therein; then such board of directors shall call a meeting of such district. The manner of calling such meeting shall be as follows:

1. The board of directors shall cause to be posted in three public places in such district, at least ten days prior to the designated time of holding such meeting, written notices of such meeting, in which shall be stated the time and place of such meeting, and the object or purpose for which the same is called:

2. The powers of such meeting shall be the same as is prescribed in section 1717 hereof, except those powers which are set forth in paragraph 2, after the word "applied" in the fifth line thereof, and in paragraph 3, after the word "district" in the fifth line thereof.

SUBDISTRICT MEETING.

SEC. 1718. The several subdistricts shall, annually, on the first Monday in March, hold a meeting for the elec-

tion of a subdirector, five days' notice of which meeting shall be given by the then resident subdirector, or, if there is none, by the district secretary, posting a written notice in three public places therein, and such notice shall state the hour of meeting. 48 *Iowa*, 157; 50 *Iowa*, 11.

SEC. 1719. (As amended by Chap. 7, Laws of 1880.) At the meeting of the subdistrict a chairman and secretary shall be appointed, who shall act as judges of the election, and give a certificate of election to the subdirector elect. When there is a tie vote between two persons for the office of subdirector the secretary shall notify the secretary of the district township board of such tie vote, and shall notify said persons to appear at the regular meeting of the board on the third Monday in March, to determine the tie vote by lot before one or more members of the board elected, and the certificate of election shall be given accordingly. Should either party fail to appear, or take part in the lot, the secretary shall draw for him. 37 *Iowa*, 131.

SEC. 1720. In all district townships comprising but one subdistrict the board of directors shall consist of three subdirectors. and in all district townships comprising but two subdistricts it shall consist of one subdirector chosen from each subdistrict and one from the district township at large, who shall in both cases be elected in the manner provided by law for the election of one subdirector from each subdistrict. The judges of the respective subdistrict elections shall canvass the votes for subdirector chosen from the district township at large, and shall issue a certificate of election to the person elected.

BOARD OF DIRECTORS.

SEC. 1721. (As amended by Chap. 27, Laws of 1874.) The subdirectors of the several subdistricts shall constitute

a board of directors for the district township, and shall enter upon their duties upon the day fixed for the regular meeting of the board in March. at which time they shall organize by electing from their own number a president, who shall simply be entitled to a vote as a member of the board; and from the district township at large, at their regular meeting on the third Monday of September in each year, a secretary and a treasurer, unless there are at least five subdirectors in the district township, in which case they may be selected from the board; and said secretary and treasurer thus elected shall qualify and enter upon the duties of their respective offices within ten days following the date of their election. If selected from the district township at large they shall have no vote in the proceedings of the board.

SEC. 1722. (As amended by Chap. 176, Laws of 1880.) The board of directors shall hold their regular meetings on the third Monday in March and September of each year; and may hold such special meetings as occasion may require, at the call of the president, or by request of a majority of the board; *provided*, that the board of directors of a district township may hold their meetings at any place within the civil or district township in which such district township is situated.

Sec. 1723. They shall make all contracts, purchases, payments, and sales necessary to carry out any vote of the district; but before erecting any school-house they shall consult with the county superintendent as to the most approved plan of such building. And all school-houses erected or repaired at a cost exceeding \$300 shall be so erected or repaired by contract, and no such contract for labor or materials shall be let until proposals for the same shall have been invited by advertisement for four weeks in some newspaper published in the county when,

the work is to be done, if there be one published therein, if not, in the nearest newspaper in an adjoining county; and such contract shall be let to the lowest responsible bidder, and bonds with sufficient sureties for the faithful performance of the contract shall be required.—25 *Iowa*, 436; 28 *Iowa*, 332; 51 *Iowa*, 350; 51 *Iowa*, 432; 35 *Iowa*, 462; 50 *Iowa*, 648.

SEC. 1724. They shall fix the site for each school-house taking into consideration the geographical position and convenience of the people of each portion of the sub-district, and shall determine what number of schools shall be taught in each subdistrict, and for what additional time beyond the period required by law they shall be continued during each year.—23 *Iowa*, 408.

SEC 1725. (As amended by Chap. 109, Laws of 1876.) They shall determine where pupils may attend school, and for this purpose may divide their district into such subdistricts as may by them be deemed necessary; *provided*, that no such subdistrict shall be created for the accommodation of less than fifteen pupils, but the board of directors shall have power to rent a room and employ a teacher for the accommodation of any five scholars; *provided further*, that nothing in this chapter contained shall be construed to prohibit the construction of as many school-houses, out of moneys derived from taxes levied previous to January 1, 1876, in any subdistrict where the subdistrict comprises the entire district township, as shall have been authorized and provided for at the annual meeting of the district township electors.

SEC. 1726. They may establish graded or union schools wherever they may be necessary, and may select a person who shall have the general supervision of the schools in their district, subject to the rules and regulations of the board.

SEC. 1727. In each subdistrict, there shall be taught one or more schools for the instruction of the youth between the ages of five and twenty-one years, for at least twenty-four weeks, of five school-days each, in each year, unless the county superintendent shall be satisfied that there is good and sufficient cause for failure so to do. Any person who was in the military service of the United States during his minority shall be admitted into the schools in the subdistrict in which he may reside, on the same terms on which youths between the ages of five and twenty-one are admitted.—24 *Iowa*, 266; 40 *Iowa*, 518; 40 *Iowa*, 369; 45 *Iowa*, 248; 47 *Iowa*, 11; 49 *Iowa*, 231.

SEC. 1728. The board of directors of any district township or independent district shall not order, or direct, or make any change in the school books or series of textbooks used in any school under their superintendence, direction, or control, more than once in every period of three years, except by a vote of the electors of the district township or independent district. 25 *Iowa*, 447.

SEC. 1729. They may use any unappropriated contingent fund in the treasury to purchase records, dictionaries, maps, charts, and apparatus for the use of the schools of their district, but shall contract no debts for this purpose. 44 *Iowa*, 564; 51 *Iowa*, 350.

SEC. 1730. They shall appoint a temporary president and secretary in case of the absence of the regular officers, and shall fill any vacancy that may occur in the office of president, secretary, or treasury, or in the board of directors.

SEC. 1731. They shall require the secretary and treasurer to give bonds to the district in such penalty and with such security as they may deem necessary to secure the district against loss, conditioned for the faithful performance of their official duties. The bonds shall be

filed with the president, and in case of a breach of the conditions thereof he shall bring suit thereon in the name of the district township or independent district. 37 *Iowa*, 550; 39 *Iowa*, 9.

SEC. 1732. They shall from time to time, examine the accounts of the treasurer and make settlement with him; and shall present, at each regular meeting of the electors of the district township, a full statement of the receipts and expenditures of the district township, and such other information as may be deemed important. 39 *Iowa*, 471.

SEC. 1733. They shall audit and allow all just claims against the district, and fix the compensation of the secretary and treasurer, and no order shall be drawn on the treasury until the claim for which it is drawn has been audited and allowed. 39 *Iowa*, 490.

SEC. 1734. They shall visit the schools in their district, and aid the teachers in establishing and enforcing the rules for the government of the schools, and see that they keep a correct list of the pupils, embracing the periods of time during which they have attended school, the branches taught, and such other matters as may be required by the county superintendent. In case a teacher employed in any of the schools of the district township is found to be incompetent, or is guilty of partiality or dereliction in the discharge of his duties, or for any other sufficient cause shown, the board of directors may, after a full and fair investigation of the facts of the case, at a meeting convened for the purpose, at which the teacher shall be permitted to be present and make his defense, discharge him.—42 *Iowa*, 522; 53 *Iowa*, 585.

SEC. 1735. The majority of the board in independent districts shall have power, with the concurrence of the president of the board of directors, to dismiss or suspend any pupils from the school in their district for gross

immorality or for a persistent violation of the regulations or rules of the school and to re-admit them if they deem it proper so to do.—30 *Iowa*, 429; 31 *Iowa*, 562.

SEC. 1736. They shall, at their regular meeting in March of each year, require the secretary to file with the county superintendent, county auditor, and county treasurer, each, a certificate of the election, qualification, and post-office address of the president, treasurer, and secretary of the district township, and to advise them from time to time of any changes made in said offices by appointment.

SEC. 1737. They shall make such rules and regulations as may be necessary for the direction and restriction of subdirectors in the discharge of their official duties, and not inconsistent with law.—40 *Iowa*, 369.

SEC. 1738. A majority of the board of directors shall be a quorum to transact business, but a less number may adjourn from time to time, and no tax shall be levied by the board after the third Monday in May; nor shall the boundaries of subdistricts be changed except by a vote of the majority of the board, nor shall the members of the board, except its secretary and treasurer, receive pay out of any school funds for services rendered under this chapter.—47 *Iowa*, 11.

PRESIDENT.

SEC. 1739. (As amended by Chap. 46, Laws of 1882.) The president shall preside at all meetings of the board of directors of independent districts and of the district townships, shall draw all drafts on the county treasury for money apportioned to his district, sign all orders on the treasury, specifying in each order the fund on which it is drawn and the use for which the money is appropriated, and shall sign all contracts made by the board, and shall be empowered to administer the oath of

office to the secretary, treasurer, and members of the board. 29 *Iowa*, 339; 14 *Iowa*, 28.

SEC. 1740. He shall appear in behalf of his district in all suits brought by or against the same, but when he is individually a party, this duty shall be performed by the secretary; and in all cases where suits may be instituted by or against any of the school officers to enforce any of the provisions herein contained, counsel may be employed by the board of directors. 14 *Iowa*, 28; 56 *Iowa*, 411.

SECRETARY.

SEC. 1741. The secretary shall record all the proceedings of the board and district meetings in separate books kept for that purpose; shall preserve copies of all reports made to the county superintendent; shall file all papers transmitted to him pertaining to the business of the district; shall countersign all drafts and orders drawn by the president, and shall keep a register of all orders drawn on the treasury, showing the number of the order, date, name of the person in whose favor drawn, the fund on which it is drawn, for what purpose and the amount; and shall, from time to time, furnish the treasurer with a transcript of the same. 45 *Iowa*, 666; 8 *Iowa*, 298.

SEC. 1742. He shall give ten days' previous notice of the district township meeting by posting a written notice in five conspicuous places therein, one of which shall be at or near the last place of meeting, and shall furnish a copy of the same to the teacher of each school in session, to be read in the presence of the pupils thereof, and such notice shall, in all cases, state the hour of meeting.

SEC. 1743. He shall keep an accurate account of all the expenses incurred by the district, and shall present the same to the board of directors, to be audited and paid as herein provided.

SEC. 1744. He shall notify the county superintendent when each school of the district begins, and its length of term.

SEC. 1745. (As amended by Chap. 112, Laws of 1876.) Between the fifteenth and twentieth days of September in each year, the secretary of each school district shall file with the county superintendent a report of the affairs of the district, which shall contain the following items:

1. The number of persons, male and female, each, in his district, between the ages of five and twenty-one years.

2. The number of schools, and the branches taught;

3. The number of pupils, and the average attendance of the same in each school;

4. The number of teachers employed, and the average compensation paid per week, distinguishing males from females;

5. The length of school in days and the average cost of tuition per week for each pupil;

6. The text-books used, and the number of volumes in the district library, and the value of apparatus belonging to the district;

7. The number of school-houses, and their estimated value;

8. The name, age, and post-office address of each deaf and dumb, and each blind person within his district between the ages of five and twenty-one, including all who are deaf and dumb to such an extent as to be unable to obtain an education in the common schools.

SEC. 1746. Should the secretary fail to file his report, as above directed, he shall forfeit the sum of twenty-five dollars and shall make good all losses resulting from such failure, and suit shall be brought in both cases by the district on his official bond.

TREASURER.

SEC. 1747. The treasurer shall hold all moneys belonging to the district, and pay out the same on the order of the president, countersigned by the secretary, and shall keep a correct account of all expenses and receipts in a book provided for that purpose.—39 *Iowa*, 9; 22 *Iowa*, 595; 29 *Iowa*, 339.

SEC. 1748. The money collected by district tax for the erection of school-houses and for the payment of debts contracted for the same, shall be called the “school-house fund;” that designed for rent, fuel, repairs, and all other contingent expenses necessary for keeping the schools in operation, the “contingent fund;” and that received for the payment of teachers, the “teachers’ fund;” and the district treasurer shall keep with each fund a separate account, and shall pay no order which does not specify the fund on which it is drawn, and the specific use to which it is applied. If he have not sufficient funds in his hand to pay in full the warrants drawn on the funds specified, he shall make a partial payment thereon, paying as near as may be an equal proportion of each warrant.—51 *Iowa*, 432; 51 *Iowa*, 350; 40 *Iowa*, 620.

SEC. 1749. He shall receive all moneys apportioned to the district township by the county auditor, and also all money collected by the county treasurer on the district school tax levied for his district.

SEC. 1750. He shall register all orders on the district treasury reported to him by the secretary, showing the number of the order, date, name of the person in whose favor drawn, the fund on which it was drawn, for what purpose and the amount.

SEC. 1751. (As amended by Chap. 112, Laws of 1876.) He shall render a statement of the finances of the dis-

trict from time to time, as may be required by the board of directors, and his books shall always be open for inspection. He shall make to the board, on the third Monday in September, a full and complete annual report embracing:

1. The amount of teachers' fund held over, received, paid out and on hand.
2. The amount of contingent fund held over, received, paid out, and on hand.
3. The amount of school-house fund held over, received, paid out, and on hand.

He shall immediately file a copy of said report with the county superintendent, and for failure to file said report he shall forfeit the sum of twenty-five dollars, to be recovered by suit brought by the district on his official bond.

SUBDIRECTOR.

SEC. 1752. Each subdirector shall, on or before the third Monday in March following his election, appear before some officer qualified to administer oaths, and take an oath to support the constitution of the United States and that of the State of Iowa, and that he will faithfully discharge the duties of his office, and in case of failure to qualify his office shall be deemed vacant. 53 *Iowa*, 687.

SEC. 1753. The subdirector, under such rules and restrictions as the board of directors may prescribe, shall negotiate and make in his subdistrict all necessary contracts for providing fuel for schools, employing teachers, repairing and furnishing school-houses, and for making all other provisions necessary for the convenience and prosperity of the schools within his subdistrict, and he shall have the control and management of the school-house unless otherwise ordered by a vote of the district township meeting. All contracts made in conformity

with the provisions of this section shall be approved by the president and reported to the board of directors, and said board, in their corporate capacity, shall be responsible for the performance of the same on the part of the district township. 33 *Iowa*, 105; 35 *Iowa*, 361; 50 *Iowa*, 11; 54 *Iowa*, 417.

SEC. 1754. He shall, between the first and tenth days of September of each year, prepare a list of the names of the heads of families in his subdistrict, together with the number of children between the ages of five and twenty-one years, distinguishing males from females, and shall record the same in a book kept for that purpose.

SEC. 1755. He shall, between the tenth and fifteenth days of September of each year, report to the secretary of the district township, the number of persons in his subdistrict between the ages of five and twenty-one years distinguishing males from females.

SEC. 1756. He shall have power with the concurrence of the president of the board of directors, to dismiss any pupil from the schools in his subdistrict for gross immorality, or for persistent violation of the regulations of the school, and to re-admit them, if he deems proper so to do; and shall visit the schools in his subdistrict at least twice during each term of said school. 30 *Iowa*, 429; 31 *Iowa*, 562; 56 *Iowa*, 476.

TEACHERS.

SEC. 1757. All contracts with teachers shall be in writing, specifying the length of time the school is to be taught, in weeks, the compensation per week, or per month of four weeks, and such other matters as may be agreed upon; and shall be signed by the subdirector or secretary and teacher, and be approved by and filed with the president before the teacher enters upon the dis-

charge of his duties. 40 *Iowa*, 444; 35 *Iowa*, 375; 34 *Iowa*, 417; 52 *Iowa*, 130.

SEC. 1758. No person shall be employed to teach a common school which is to receive its distributive share of the school fund unless he shall have a certificate of qualification signed by the county superintendent of the county in which the school is situated, or by some other officer duly authorized by law; and any teacher who commences teaching without such certificate shall forfeit all claim to compensation for the time during which he teaches without such certificate. 44 *Iowa*, 564; 17 *Iowa*, 228.

SEC. 1759. The teacher shall keep a correct daily register of the school, which shall exhibit the number or other designation thereof, township and county in which the school is kept; the day of the week, the month and year; the name, age, and attendance of each pupil, and the branches taught. When scholars reside in different districts a register shall be kept for each district.

SEC. 1760. The teacher shall, immediately after the close of his school, file in the office of the secretary of the board of directors, a certified copy of the register aforesaid.

GENERAL PROVISIONS.

SEC. 1761. A school month shall consist of four weeks of five school days each.

SEC. 1762. During the time of holding a teachers' institute in any county, any school that may be in session in such county shall be closed; and all teachers, and persons desiring a teacher's certificate, shall attend such institute, or present to the county superintendent satisfactory reasons for not so attending, before receiving such certificate.

SEC. 1763. The electors of any school district at any

legally called school meeting, may by a vote of the majority of the electors present, direct the German or other language to be taught as a branch in one or more of the schools of said district, to the scholars attending the same whose parents or guardians may so desire; and thereupon such board of directors shall provide that the same be done; *provided*, that all other branches taught in said school or schools shall be taught in the English language; *provided further*, that the person employed in teaching the said branches shall satisfy the county superintendent of his ability and qualifications, and receive from him a certificate to that effect.

SEC. 1764. The Bible shall not be excluded from any school or institution in this state nor shall any pupil be required to read it contrary to the wishes of his parent or guardian.

COUNTY SUPERINTENDENT.

SEC. 1765. The county superintendent shall not hold any office in, or be a member of the board of directors of a district township or independent district, or of the board of supervisors during the time of his incumbency.

SEC. 1766. (As amended by Chap 143, Laws of 1878.) On the last Saturday of each month, the county superintendent shall meet all persons desirous of passing an examination, and for the transaction of other business within his jurisdiction, in some suitable room provided for that purpose by the board of supervisors at the county seat, at which time he shall examine all such applicants for examination as to their competency and ability to teach orthography, reading, writing, arithmetic, geography, English grammar, physiology and history of the United States; and in making such examination, he may, at his option, call to his aid one or more assistants. Teachers exclusively teaching music, drawing, penman-

ship, book-keeping, German or other language, shall not be required to be examined except in reference to such special branch, and in such case it shall not be lawful to employ them to teach any branch except such as they shall be examined upon and which shall be stated in the certificate.—49 *Iowa*, 245; 44 *Iowa*, 564.

SEC. 1767. If the examination is satisfactory, and the superintendent is satisfied that the respective applicants possess a good moral character, and the essential qualifications for governing and instructing children and youth, he shall give them a certificate to that effect, for a term not exceeding one year.—52 *Iowa*, 111.

SEC. 1768. Any school officer or other person shall be permitted to be present at the examination; and the superintendent shall make a record of the name, residence, age, and date of examination of all persons so examined, distinguishing between those to whom he issued certificates and those rejected.

SEC. 1769. (As amended by Chap. 57, Laws of 1874, and Chap. 54, Laws of 1878.) The county superintendent shall hold, annually, a normal institute for the instruction of teachers and those who may desire to teach, and with the concurrence of the superintendent of public instruction, procure such assistance as may be necessary to conduct the same, at such time as the schools in the county are generally closed. To defray the expenses of said institute, he shall require the payment of a registration fee of one dollar from each person attending the normal institute, and shall also require the payment, in all cases, of one dollar from every applicant for a certificate. He shall, monthly, and at the close of each institute, transmit to the county treasurer, all moneys so received including the state appropriation for institutes, to be designated the "institute fund"; together with a report of the

name of each person so contributing, and the amount. The board of supervisors may appropriate such additional sum as may by them be deemed necessary for the further support of such institute. All disbursements of the institute fund shall be upon the order of the county superintendent; and no order shall be drawn except for bills presented to the county superintendent, and approved by him, for services rendered or expenses incurred in connection with the normal institute.

SEC. 1770. If, for any cause, the county superintendent is unable to attend to his official duties, he shall appoint a deputy to perform them in his stead, except visiting schools and trying appeals.

SEC. 1771. The superintendent may revoke the certificate of any teacher in the county which was given by the superintendent thereof, for any reason which would have justified the withholding thereof when the same was given, after an investigation of the facts in the case, of which investigation the teacher shall have personal notice, and he shall be permitted to be present and make his defense.

SEC. 1772. On the first Tuesday of October of each year, he shall make a report to the superintendent of public instructions, containing a full abstract of the reports made to him by the respective district secretaries, and such other matters as he shall be directed to report by said superintendent, and as he, himself, may deem essential in exhibiting the true condition of the schools under his charge; and he shall, at the same time, file with the county auditor a statement of the number of persons between the ages of five and twenty-one years in each school district in his county.

SEC. 1773. Should he fail to make either of the reports required in the last section, he shall forfeit to the school

fund of his county the sum of fifty dollars, and shall, besides, be liable for all damages caused by such neglect.

SEC. 1774. (As amended by Chap. 161, Laws of 1882.) He shall at all times conform to the instructions of the superintendent of public instruction, as to matters within the jurisdiction of the said superintendent. He shall serve as the organ of communication between the superintendent and township or district authorities. He shall transmit to the townships, districts, or teachers, all blanks, circulars, and other communications which are to them directed. He may at his discretion visit the different schools in his county and shall, at the request of a majority of the directors of a district visit the school in said district at least once during each term.

SEC. 1775. He shall report on the first Tuesday of October of each year to the superintendent of the Iowa college for the blind, the name, age, residence and post-office address of every person blind to such an extent as to be unable to acquire an education in the common schools, and who resides in the county in which he is superintendent, and also to the superintendent of the Iowa institution for the deaf and dumb, the name, age, and post-office address of every deaf and dumb person between the ages of five and twenty-one who resides within his county, including all such persons as may be deaf to such an extent as to be unable to acquire an education in the common schools.

SEC. 1776. (As amended by Chap. 161, Laws of 1882.) The county superintendent shall receive from the county treasury the sum of four dollars per day for every day necessarily engaged in the performance of official duties, and also the necessary stationery and postage for the use of his office, and he shall be entitled to such additional compensation as the board of supervisors may allow;

provided, that he shall first file a sworn statement of the time he has been employed in his official duties, with the county auditor.—49 *Iowa*, 245; 51 *Iowa*, 53.

TAXES.

SEC. 1777. The board of directors shall, at their regular meeting in March of each year or at a special meeting convened for that purpose, between the time designated for such regular meeting and the third Monday in May, estimate the amount required for the contingent fund, and also such sum as may be required for the teachers' fund, in addition to the amount received from the semi-annual apportionment, as shown by the notice from the county auditor, to support the schools of the district for the time required by law for the current year; and shall cause the secretary to certify the same, together with the amount voted for school-house purposes, within five days thereafter to the board of supervisors, who shall at the time of levying taxes for county purposes, subject to the provisions of section seventeen hundred and eighty of this chapter, levy the per centum necessary to raise the sum thus certified upon the property of the district township, which shall be collected and paid over as are other district taxes.—41 *Iowa*, 153; 28 *Iowa*, 332; 41 *Iowa*, 153 41 *Iowa*, 179; 3 *gr.* 255; 4 *gr.* 448.

SEC. 1778. They shall apportion any tax voted by the district township meeting for school-house fund, among the several subdistricts in such a manner as justice and equity may require, taking as the basis of such apportionment the respective amounts previously levied upon said subdistricts for the use of such fund; *provided*, that if the electors of one or more subdistricts at their last annual meeting shall have voted to raise a sum for school-house purposes greater than that granted by the electors

at the last annual meeting of the district township, they shall estimate the amount of such excess on such sub-district or subdistricts, and cause the secretary to certify the same within five days thereafter to the board of supervisors, who shall, at the time of levying taxes for county purposes, levy the per centum of such excess on the taxable property of the subdistrict asking the same, provided that not more than fifteen mills on the dollar shall be levied on the taxable property of any subdistrict for any one year for school-house purposes.—49 *Iowa*, 325; 38 *Iowa*, 440; 38 *Iowa*, 445; 55 *Iowa*, 215.

SEC. 1779. The board of supervisors of each county shall, at the time of levying the taxes for county purposes, levy a tax for the support of schools within the county of not less than one mill, nor more than three mills on the dollar, on the assessed value of all the real and personal property within the county, which shall be collected by the county treasurer at the time and in the same manner as state and county taxes are collected, except that it shall be receivable only in cash.

SEC. 1780. They shall also levy at the same time, the district school tax certified to them from time to time, by the respective district secretaries; *provided*, that the amount levied for school-house fund shall not exceed ten mills on the dollar, on the property of any district, and the amount levied for contingent fund shall not exceed five dollars per pupil, and the amount raised for teachers' fund, including the amount received from the semi-annual apportionment, shall not exceed fifteen dollars per pupil for each pupil residing in the district, as shown by the last report of the county superintendent. And if the amount certified to the board of supervisors exceeds this limit, they shall levy only to the amount limited; *provided*, that they may levy seventy-five dollars,

for contingent fund and two hundred and seventy dollars, including the amount received from the semi-annual apportionment, for the teachers' fund for each subdistrict. —43 *Iowa*, 466 ; 41 *Iowa*, 57 ; 41 *Iowa*. 66.

COUNTY AUDITOR.

SEC. 1781. The county auditor shall, on the first Monday in April and the fourth Monday in September of each year, apportion the county school tax, together with the interest of the permanent school fund to which his county is entitled, and all other money in the hands of the county treasurer belonging in common to the schools of his county and not included in any previous apportionment among the several districts therein, in proportion to the number of persons between five and twenty-one years of age, as shown by the report of the county superintendent filed with him for the year immediately preceding.

SEC. 1782. He shall immediately notify the president of each school district of the sum to which his district is entitled by said apportionment, and shall issue his warrant for the same to accompany said notice, which warrant shall be also signed by the president and countersigned by the secretary of the district in whose favor the same is drawn ; and shall authorize the district treasurer to draw the amount due said district from the county treasurer : and the secretary shall charge the treasurer of the district with all warrants drawn in his favor, and credit him with all warrants drawn on the funds in his hands, keeping separate accounts with each fund.

SEC. 1783. He shall forward to the superintendent of public instruction a certificate of the election or appointment and qualification of the county superintendent ; and shall, also on the second Monday in February and August of each year, make out and transmit to the auditor of

state, in accordance with such forms as said auditor may prescribe, a report of the interest of the school fund then in the hands of the county treasurer, and not included in any previous apportionment, and also the amount of said interest remaining unpaid.

COUNTY TREASURER.

SEC. 1784. The county treasurer shall, on the first Monday in April of each year pay over to the treasurer of the district the amount of all school district tax which shall have been collected, and shall render him a statement of the amount uncollected, and shall pay over the amount in his hands quarterly thereafter. He shall also keep the amount of tax levied for school-house purposes, separate in each subdistrict, where such levy has been made directly upon the property of the subdistrict making the application, and shall pay over the same quarterly to the township treasurer for the benefit of such subdistrict. He shall, in all counties wherein independent districts are organized, keep a separate account with said independent districts, in which the receipts shall be daily entered, which books shall at all times be open to the inspection and examination of the district board of directors, and shall pay over to the said independent districts the amount of school taxes in his possession on the order of the board, on the first day of each and every month.

SEC. 1785. On the first day of each quarter, the county treasurer shall give notice to the president of the school board of each township in his county of the amount collected for each fund; and the president of each board shall draw his warrant, countersigned by the secretary, upon the county treasurer for such amount, who shall pay the amount of such taxes to the treasurers of the several school boards only on such warrants.

MISCELLANEOUS.

SEC. 1786. All fines and penalties collected from a school district officer by virtue of any of the provisions of this chapter, shall inure to the benefit of that particular district. Those collected from any member of the board of directors shall belong to the district township, and those collected from county officers, to the county. In the two former cases, suit shall be brought in the name of the district township; in the latter, in the name of the county, and by the district attorney. The amount in each case shall be added to the fund next to be applied by the recipient for the use of common schools.

SEC. 1787. When a judgment has been obtained against a school district, the board of directors shall pay off and satisfy the same from the proper fund, by an order on the treasurer; and the district meeting, at the time for voting a tax for the payment of other liabilities of the district shall provide for the payment of such order or orders.—40 *Iowa*, 620; 34 *Iowa*, 510; 52 *Iowa*, 287.

SEC. 1788. In case a school district has borrowed money of the school fund, the board of supervisors shall levy such tax, not exceeding five mills on the dollar in any one year, on the taxable property of the district as constituted at the time of making such loan, as may be necessary to pay the annual interest on said loan, and the principal when the same falls due unless the board of supervisors shall see proper to extend the time of said loan.

SEC. 1789. No district township or subdistrict meeting shall organize earlier than nine o'clock A. M., nor adjourn before twelve o'clock M.: and in all independent districts having a population of three hundred and upward, the polls shall remain open from nine o'clock A. M. to four o'clock P. M.—34 *Iowa*, 306.

SEC. 1790. Any school director, or director elect, is authorized to administer to any school director elect the official oath required by law, and said official oath may be taken on or before the third Monday in March following the election of directors.—53 *Iowa*, 687.

SEC. 1791. When any school officer is superseded by election or otherwise, he shall immediately deliver to his successor in office, all books, papers, and moneys pertaining to his office, taking a receipt therefor; and every such officer who shall refuse to do so, or who shall willfully mutilate or destroy any such books or papers, or any part thereof, or shall misapply any moneys entrusted to him by virtue of his office, shall be liable to the provisions of the general statutes for the punishment of such offense.

SEC. 1792. Nothing in this chapter shall be so construed as to give the board of directors of a district township jurisdiction over any territory included within the limits of any independent district.

SEC. 1793. (As amended by Chap. 64, Laws of 1876, and Chap. 41, Laws of 1878.) Children residing in one district may attend school in another in the same or adjoining county or township, on such terms as may be agreed upon by the respective boards of directors; but in case no such agreement is made, they may attend school in any such adjoining district, with the consent of the county superintendent of the county where said pupils reside and the board of directors of said adjoining district, when they reside nearer the school in said district, and one and a half miles or more, by the nearest traveled highway, from any school in their own. The board of directors of the township in which such children reside, shall be notified in writing, and the district in which they reside shall pay to the district in which they at-

tend school, the average tuition of said children per week, and an average proportion of the contingent expenses of said district where they attend school; and in case of refusal so to do, the secretary shall file the account for said tuition and contingent expenses certified to by the president of his board, with the county auditor of the county in which said children reside, and the said county auditor shall at the time of making the next semi-annual apportionment thereafter, deduct the amount so certified from the sum apportioned to the district in which said children reside, and cause it to be paid over to the district in which they have attended school.—49 *Iowa*, 231.

SEC. 1794. Pupils who are actual residents of a district shall be permitted to attend school in the same, regardless of the time when they acquired such residence, whether before or after the enumeration, or of the residence of their parents or guardians; but pupils who are sojourning temporarily in one district, while their actual residence is in another, and to whom the last preceding section is not applicable, may attend school upon such terms as the board of directors may deem just and equitable.

SEC. 1795. Pupils may attend school in any subdistrict of the district township in which they reside with the consent of the subdirector of such subdistrict, and of the subdirector of the subdistrict in which such pupils reside.

SEC. 1796. The board of directors shall, at their regular meeting in September, or at any special meeting called thereafter for that purpose, divide their township into subdistricts, such as justice, equity, and the interests of the people require; and may make such alterations of the boundaries of subdistricts heretofore formed, as may

be deemed necessary; and shall designate such subdistricts, and all subsequent alterations, in a distinct and legible manner, upon a plat of the district provided for that purpose; and shall cause a written description of the same to be recorded in the district records, a copy of which shall be delivered by the secretary to the county treasurer, and also to the county auditor, who shall record the same in his office; *provided*, that the boundaries of subdistricts shall conform to the lines of congressional divisions of land; and that the formation and alteration of subdistricts as contemplated in this section, shall not take effect until the next subdistrict election thereafter, at which election a subdirector shall be elected for the new subdistrict.—48 *Iowa*, 157; 50 *Iowa*, 11.

SEC. 1797. In cases where, by reason of streams or other natural obstacles, any portion of the inhabitants of any school district cannot, in the opinion of the county superintendent, with reasonable facility enjoy the advantages of any school in their township, the said county superintendent, with the consent of the board of directors of such district as may be affected thereby, may attach such part of said township to an adjoining township, and the order therefor shall be transmitted to the secretary of each district, and be by him recorded in his records, and the proper entry made on his plat of the district.—41 *Iowa*, 30; 55 *Iowa*, 390.

SEC. 1798. (As amended by Chap. 111, Laws of 1880, and Chap. 160, Laws of 1882.) In all cases where territory has been or may be set into an adjoining county or township, or attached to any independent school district in any adjoining county or township, for school purposes, such territory may be restored by the concurrence of the respective boards of directors; but on the written application of two-thirds of the electors residing upon the territory within such

township or independent district in which the school-house is not situated, the said boards shall restore the territory to the district to which it geographically belongs. *Provided, however,* That no such restoration shall be made unless there are fifteen or more pupils between the ages of five and twenty-one years actually residing upon said territory sought to be restored, and not until there has been a suitable school-house erected and completed within the limits of said territory, suitable for school purposes.—45 *Iowa*, 53.

SEC. 1799. The boundary lines of a civil township shall not be changed by the board of supervisors of any county, so as to divide any school district by changing the boundary lines thereof, except when a majority of the voters of such district shall petition therefor; *provided however,* that this shall not prevent the change of the boundary lines of any civil township, when such change is made by adopting the lines of congressional townships.

INDEPENDENT DISTRICTS.

SEC. 1800. (As amended by Chap. 139, Laws of 1880.) Any city, town or village containing not less than two hundred inhabitants within its limits, may be constituted a separate school district; and territory contiguous to such city, town or village may be included with it as a part of said separate district in the manner hereinafter provided. The village herein mentioned shall be understood to be a collection of inhabitants residing within the limits of a town plat, and not organized into a city or incorporated town.—29 *Iowa*, 265; 41 *Iowa*, 30; 46 *Iowa*, 425.

SEC. 1801. At the written request of any ten legal voters residing in such city or town, the board of directors of the district township shall establish the boundaries of the contemplated school district, including such

contiguous territory as may best subserve the convenience of the people for school purposes, and shall give at least ten days previous notice of the time and place of meeting of the electors residing in said district, by posting written notices in at least five conspicuous places therein; at which meeting the said electors shall vote by ballot for or against a separate organization.—25 *Iowa*, 305; 41 *Iowa*, 30; 46 *Iowa*, 425; 34 *Iowa*, 306; 17 *Iowa*, 85.

SEC. 1802. (As amended by Chap. 27, Laws of 1874, and Chap. 143, Laws of 1880.) Should a majority of votes be cast in favor of such separate organization, the board of directors of the district township shall give similar notice of a meeting of the electors for the election of six directors. Two of these directors shall hold their office until the first annual meeting after their election, and until their successors are elected and qualified: two until the second, and two until the third annual meeting thereafter; their respective terms of office to be determined by lot. The six directors shall constitute a board of directors for the district, and they shall, at their first regular meeting in each year, elect a president from their own number; and at their meeting on the third Monday in September in each year, a secretary and treasurer to be chosen outside of the board; *provided*, that in all independent districts having a population of less than five hundred, there shall be three directors elected, who shall organize by electing a president from their own number, also a secretary, who may or may not be a member of the board, and a treasurer, who shall not be a member of the board; *and provided further*, that in all independent districts already organized, the terms of office of such directors as may have been chosen previous to the taking effect of this section for two or three years, shall not be interfered with by its passage.—48 *Iowa*, 189.

SEC. 1803. Said meeting for the first election of directors shall organize by appointing a president and secretary, who shall act as judges of the election, and issue a certificate of election to the persons elected.

SEC. 1804. The organization of such independent district shall be completed on or before the first day of August of the year in which such organization is attempted, and when such organization is thus completed, all taxes levied by the board of directors of the district township of which the independent district formed a part in that year, shall be void so far as the property within the limits of the independent district is concerned; and the board of directors of such independent district shall levy all necessary taxes for school purposes as provided by law for that year at a meeting called for that purpose, at any time before the third Monday of August of that year, which shall be certified to the board of supervisors on or before the first Monday of September, and said board of supervisors shall levy said tax at the time and in the manner that school taxes are required to be levied in other districts.—35 *Iowa*, 462; 51 *Iowa*, 658.

SEC. 1805. In case such district is formed of parts of two or more civil townships in the same or adjoining counties, the duty of giving the notice shall devolve upon the board of directors of the township in which a majority of the legal voters of the contemplated district reside.

SEC. 1806. Said district may have as many schools, and be divided into such wards or other subdivisions for school purposes, as the board of directors may deem proper; and shall be governed by the laws enacted for the regulation of district townships, so far as the same may be applicable.—32 *Iowa*, 105; 44 *Iowa* 564.

SEC. 1807. It shall be lawful for the electors of any independent district, at the annual meeting of such dis-

trict to vote a tax, not exceeding ten mills on the dollar in any one year, on the taxable property of such district, as the meeting may deem sufficient for the purchase of grounds and the construction of the necessary school-houses for the use of such independent district, and for the payment of any debts contracted for the erection of such school-houses, and for procuring a library and apparatus for the use of the schools of such independent district.—43 *Iowa*, 48; 43 *Iowa* 73.

SEC. 1808. (As amended by Chap. 7, Laws of 1880.) The annual meeting of all independent districts shall be held on the second Monday in March for the transaction of the business of the district, and for the election by ballot of two directors, as the successors of the two whose term expires, who shall continue in office for three years; and the president, secretary, and one of the directors then in office shall act as judges of the election, and shall issue certificates of election to the persons elected for the ensuing term; *provided*, that in all independent districts, having a population of less than five hundred, there shall be elected, annually, one director, who shall continue in office for three years. In cases of a tie vote in the election of director, or directors, the secretary shall notify them to appear at the regular meeting of the board on the third Monday in March, to determine their election by lot before one or more members of the board elected, and the certificate of election shall be given accordingly. Should either party fail to appear, or take part in the lot, the secretary shall draw for him.

SEC. 1809. When an independent district has been formed out of a civil township, or townships, as herein contemplated, the remainder of such township, or of each of such townships, as the case may be, shall constitute a district township as provided in section seventeen hundred

and thirteen of this chapter, and the boundaries between such district township and independent district may be changed, or the independent district abandoned at any time, with the concurrence of their respective boards of directors —55 *Iowa*, 390.

· SEC. 1810. In case an independent district embraces a part or the whole of a civil township which has no separate district township organization, upon the written application of two-thirds of the electors residing upon the territory of such independent district, and within such civil township, to the board of directors, they shall set off such territory, whether provided with school houses or not, to be organized as a district township in the manner provided for such organization when a new civil township is formed.

SEC. 1811. Independent districts, located contiguous to each other, may unite and form one and the same independent district, in the manner following: At the written request of any ten legal voters residing in each of said independent districts, their respective boards of directors shall require their secretaries to give at least ten days' notice of the time and place for a meeting of the electors residing in such districts, by posting written notices in at least five public places in each of said districts, at which meetings the said electors shall vote by ballot for or against a consolidated organization of said independent districts; and if a majority of the votes cast at the election in each district shall be in favor of uniting said districts, then the secretaries shall give similar notice of a meeting of the electors, as provided for by the law for the organization of independent districts. The independent district thus consolidated shall be completed, and its directors governed by the same provisions of the law which apply to other independent districts.

SEC. 1812. Where, under the school laws of the state heretofore in force, for the convenience and accommodation of the people, school districts were formed of portions of two counties of territory lying contiguous to each other, at the written request of five legal voters residing in portions of said territory in each county, the board of directors of the district township to which such territory belongs, having a majority of the legal voters, shall fix the boundaries of an independent school district, composed of such sections of land, or portions thereof as may be described in the petition therefor, and shall give at least ten days' notice of the submission of the question of the formation of said independent district, at a special election for said purpose, specifying the boundaries of the district, the time and place of meeting of the electors for such election, at which meeting the electors in the contemplated district shall vote by ballot for or against the separate organization. Should a majority of the votes be cast in favor of such separate organization, the said board of directors shall proceed by ballot to elect officers in the manner provided by law, and organize such independent district.--41 *I wa*, 30; 53 *Iowa*, 663.

SEC. 1813. The boards of directors of the several independent school districts are hereby required to publish, two weeks before the annual school election in such district, by publication in one or more newspapers, if any are published in such district, or by posting up in writing in not less than three conspicuous places in such independent district, a detailed and specific statement of the receipts and disbursements of all funds expended for school and building purposes for the year preceding such annual election. And the said boards of directors shall also, at the same time, publish in detail an estimate of the several amounts which, in the judgment of such

board, are necessary to maintain the schools in such district for the next succeeding school year; and failure to comply with the provisions of this section shall make each director liable to a penalty of ten dollars.

SEC. 1814. Township districts may be consolidated and organized as independent districts, in the following manner: Whenever the board of directors of any existing district township shall deem the same advisable, and also whenever requested to do so by a petition signed by one-third of the voters of the district township, the board shall submit to the voters of said district township, at a regular election, or one called for the purpose, the question of consolidation, at which election the voters of the district township shall vote for or against consolidation. If a majority of votes shall be in favor of such consolidated organization, such district township shall organize on the second Monday of March following as an independent district; *provided*, that in townships which have been divided into independent districts, the duties in this section devolving on the board of directors shall be performed by the trustees of the township to whom the petition shall in such cases be addressed; *and provided further*, that nothing in this section shall be construed to affect independent districts composed wholly or mainly of cities or incorporated towns. Independent districts may in like manner change their boundaries so as to form any number of districts less than the number of districts existing at the time such change is asked for, and such changes shall be specified in the notices for a vote thereon.—45 *Iowa*, 53.

SEC. 1815. (As amended by Chap. 155, Laws of 1876.) The independent districts of a civil township may be constituted a district township in the manner hereinafter provided.—29 *Iowa*, 264.

SEC. 1816. (As amended by Chap. 155, Laws of 1876.) At the written request of one-third of the legal voters residing in any civil township, which is divided into independent districts, the township trustees shall call a meeting of the qualified electors of such civil township at the usual place of holding the township election, by giving at least ten days' notice thereof, by posting three written notices in each independent district in the township, and by publication in a newspaper if one be published in such township, at which meeting the said electors shall vote by ballot for or against a district township organization.

SEC. 1817. (As amended by Chap. 155, Laws of 1876.) If a majority of the votes cast at such election be in favor of such district township organization, each independent district shall become a subdistrict of the district township, and shall organize as such subdistrict on the first Monday in March following, by the election of a subdirector.

SEC. 1818. (As amended by Chap. 155, Laws of 1876.) Each subdistrict so formed shall hold a meeting on the first Monday in March for the election of a subdirector; five days' notice of which meeting shall be given by the secretary of the old independent district, by posting written notices in three public places in each district, which notices shall state the hour and place of the meeting.

SEC. 1819. (As amended by Chap. 155, Laws of 1876.) District townships organized under the provisions of the preceding four sections shall be governed and treated in all respects as other district townships; *provided*, that nothing in this act shall be construed to affect independent districts composed wholly or mainly of cities or incorporated towns.

SEC. 1820. (As amended by Chap. 155, Laws of 1876.) When any district township is organized under the pro-

visions of the preceding five sections, the subdirectors shall organize as a board of directors on the third Monday in March, and make an equitable settlement of the then existing assets and liabilities of the several independent districts.—36 *Iowa*, 220.

SEC. 1821. (As amended by Chap. 121, Laws of 1876.) Independent school districts shall have the power and authority to borrow money for the purpose of redeeming outstanding bonds and erecting and completing school houses, by issuing negotiable bonds of the independent district, to run any period not exceeding ten years, drawing a rate of interest not to exceed ten per centum per annum, which interest may be paid semi-annually, which said indebtedness shall be binding and obligatory on the independent district for the use of which said loan shall be made; but no district shall permit a greater outstanding indebtedness than an amount equal to five per centum of the last assessed value of the property of the district.—43 *Iowa*, 48; 43 *Iowa*, 55; 42 *Iowa*, 632.

SEC. 1822. (As amended by Chap. 59, Laws of 1880.) The directors of the independent district may submit to the voters of their district, at the annual or a special meeting, the question of issuing bonds, as contemplated by the preceding section, giving the same notice of such meeting as is now required by law to be given for the election of officers of such districts, and the amount proposed to be raised by the sale of such bonds, which question shall be voted upon by the electors, and if a majority of all the votes cast on that question be in favor of such loan, then said board shall issue bonds to the amount voted, in denominations of not less than twenty-five dollars, nor exceeding one thousand dollars, due not more than ten years after date, and payable at the pleasure of the district at any time before due, which said

bonds shall be given in the name of the independent district issuing them, and shall be signed by the president of the board, and attested by the secretary, and delivered to the treasurer, taking his receipt therefor, who shall negotiate said bonds at not less than their par value, and countersign the same when negotiated. The treasurer shall stand charged upon his official bond with all bonds that may be delivered to him; but any bond or bonds not negotiated may be returned by him to the board.

SEC. 1823. If the electors of an independent school district which has issued bonds shall, at the annual meeting in March for any year, fail to vote sufficient school-house tax to raise a sum equal to the interest on the outstanding bonds which will accrue during the then coming year, and such proportionate portion of the principal as will liquidate and pay off said bonds at maturity, then it shall be lawful for the board of such district to vote a sufficient rate on the taxable property of the district to pay such interest, and such proportionate portion of the principal as will pay said bonds in full by the time of their maturity, and shall cause the same to be certified and collected the same as other school taxes.

SEC. 1824. All school orders shall draw lawful interest after having been presented to the treasurer of the district, and not paid for want of funds, which fact shall be indorsed upon the order by the treasurer.

SCHOOL-HOUSE SITES.

SEC. 1825. It shall be lawful for any district township or independent district to take and hold, under the provisions contained in this chapter, so much real estate as may be necessary for the location and construction of a school-house and convenient use of the school; *provided*,

that the real estate so taken, otherwise than by the consent of the owner or owners, shall not exceed one acre.—
53 *Iowa*, 255.

SEC. 1826. The site so taken must be on some public highway, at least forty rods from any residence, the owner whereof objects to its being placed nearer, and not in any orchard, garden, or public park. But this section shall not apply to any incorporated town.

Sec. 1827. If the owner of any such real estate refuse or neglect to grant the site on his premises, or if such owner cannot be found, the county superintendent of the county in which said real estate may be situated, shall, upon application of either party, appoint three disinterested persons of said county, unless a smaller number is agreed upon by the parties, who shall, after taking an oath to faithfully and impartially discharge the duties imposed on them by this chapter, inspect said real estate and assess the damages which said owner will sustain by appropriation of his land for the use of said house and school, said county superintendent giving to the owner of such real estate the same notice as is required for the commencement of a suit at law in the district court, of the time of such assessment of damage, and make a report in writing to the county superintendent of said county, giving the amount of damages, description of land, and exact location, who shall file and preserve the same in his office. If said board shall, at any time before they enter upon said land, for the purpose of building said house, deposit with the county treasurer for the use of said owner, the sum so assessed as aforesaid, they shall be thereby authorized to build such house, and maintain the right to said premises: *provided*, that either party may have the right to appeal from said assessment of damages to the circuit court of the county where

such real estate is situated within twenty days after receiving notice that such assessment is made which appeal shall be final; but such appeal shall not delay the prosecution of work upon said house, if said board shall pay, or deposit with the county treasurer, the amount so assessed by such appraisers, and in no case shall said board be liable for costs on appeal, unless the owner of said real estate shall be adjudged a greater amount of damages than was awarded by said appraisers. The board shall in all cases pay costs of the first assessment.

SEC. 1828. The title acquired by said school districts in and to said real property, shall be for school purposes only, and in case the same should cease to be used for said purpose for the space of two years, then the title shall revert to the owner of the fee, upon the repayment by him of the principal amount paid for said land by said districts without interest, together with the value of any improvements thereon erected by said districts; *provided*, that during the time said site is used for school purposes, the owners of the fee shall not injure or remove the timber standing and growing thereon.

APPEALS.

SEC. 1829. Any person aggrieved by any decision or order of the district board of directors, in matter of law or of fact, may, within thirty days after the rendition of such decision, or the making of such order, appeal therefrom to the county superintendent of the proper county. 23 *Iowa*, 408; 35 *Iowa*, 445; 45 *Iowa*, 391; 17 *Iowa*, 16; 50 *Iowa*, 648; 55 *Iowa*, 215.

SEC. 1830. The basis of the proceeding shall be an affidavit, filed by the party aggrieved with the county superintendent, within the time for taking the appeal.

SEC. 1831. The affidavit shall set forth the errors complained of in a plain and concise manner.

SEC. 1832. The county superintendent shall, within five days after the filing of such affidavit in his office, notify the secretary of the proper district, in writing, of the taking of such appeal. And the latter shall, within ten days after being thus notified, file in the office of the county superintendent a complete transcript of the record and proceedings relating to the decision complained of, which transcript shall be certified to be correct by the secretary.

SEC. 1833. After the filing of the transcript aforesaid in his office, he shall notify in writing all persons adversely interested of the time and place where the matter of the appeal will be heard by him.

SEC. 1834. At the time thus fixed for hearing, he shall hear testimony for either party, and for that purpose may administer oaths if necessary, and he shall make such decision as may be just and equitable, which shall be final unless appealed from as hereinafter provided.—17 *Iowa*, 16.

SEC. 1835. An appeal may be taken from the decision of the county superintendent to the superintendent of public instruction, in the same manner as provided in this chapter for taking appeals from the district board to the county superintendent, as nearly as applicable, except that he shall give thirty days' notice of the appeal to the county superintendent, and the like notice shall be given the adverse party. And the decision, when made shall be final.—35 *Iowa*, 445; 35 *Iowa*, 448.

SEC. 1836. Nothing in this chapter shall be so construed as to authorize either the county or state superintendent to render a judgment for money, neither shall they be allowed any other compensation than is now allowed by law. All necessary postage must first be paid by the party aggrieved.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

SEC. 1577. The superintendent of public instruction shall be charged with the general supervision of all the county superintendents and all the common schools of the state. He may meet county superintendents in convention at such points in the state as he may deem most suitable for the purpose, and by explanation and discussion endeavor to secure a more uniform and efficient administration of school laws. He shall attend teachers' institutes in the several counties of the state as far as may be consistent with the discharge of other duties imposed by law, and assisted by lecture or otherwise in their instruction and management. He shall render a written opinion to any school officer asking it, touching the exposition or administration of any school law, and shall determine all cases appealed from the decision of county superintendents.

SEC. 1578. An office shall be provided for him at the seat of government, in which he shall file all papers, reports, and public documents transmitted to him by the county superintendents, each year separately, and hold the same in readiness to be exhibited to the governor, or to a committee of either house of the general assembly, at any time when required; and he shall keep a fair record of all matters pertaining to his office.

SEC. 1579. (As amended by Chap. 150, Laws of 1880.) After the adjournment of the eighteenth general assembly, and every four years thereafter, if deemed necessary, he may cause to be printed and bound in cloth the school laws and all amendments thereto, with such notes, rulings, forms and decisions as may seem of value to aid school officers in the proper discharge of their duties. Appropriate reference shall be made to the previous law that has been amended or changed, so as clearly to indicate the

effect of such amendments or changes. He shall send to each county superintendent a number of copies sufficient to supply each school district in his county with one copy of such school laws, with decisions. He shall also cause to be printed and bound in paper covers the school laws, with notes and with forms necessary to be used in carrying out the school laws. The distribution of these laws in paper covers shall be made through the county auditor, under the direction of the secretary and auditor of state, who shall determine the price, covering the cost to the state, at which they shall be sold to any party; *provided*, that he shall furnish each of the members of the boards of directors with one copy of the laws bound in paper covers, which shall be turned over to their successors in office. After such sessions of the general assembly as the state superintendent shall not deem it necessary to publish the laws as provided for in this section, he shall cause to be published in pamphlet form all the amendments to the school laws passed by such general assembly, in sufficient numbers to supply each of the county superintendents and school officers of the state with one copy free of charge, which said amendments shall be sent to the several county superintendents for distribution.

SEC. 1580. (Repealed by Chap. 102, Laws of 1878.)

SEC. 1581. He may, if he deem it expedient, subscribe for a sufficient number of the Iowa School Journal, or of such other educational journal published in the state as he may select, to furnish each county superintendent with one copy, and his certificate of having thus subscribed shall be authority for the auditor of state to issue his warrant for the amount of said subscriptions; *provided*, he shall cause to be inserted in the journal he may so select a correct copy of any decision he may deem it necessary to make for the efficient carrying out of the school law.

SEC. 1582. He shall annually, on the first day of January, report to the auditor of state the number of persons in each county between the ages of five and twenty-one years.

SEC. 1583. He shall make a report to the general assembly, at each regular session thereof, which shall embrace, first, a statement of the condition of the common schools of the state; the number of district townships and subdistricts therein; the number of teachers; the number of schools; the number of school-houses, and the value thereof; the number of persons between five and twenty-one years of age; the number of scholars in each county that have attended school the previous year, as returned by the several county superintendents; the number of books in the district libraries; and the value of all apparatus in the schools, and such other statistical information as he may deem important. Second, such plans as he may have matured for the more perfect organization and efficiency of common schools. He shall cause one thousand copies of his report to be printed, and shall present it to the general assembly on the second day of its session.

SEC. 1584. Whenever reasonable assurance shall be given by the county superintendent of any county to the superintendent of public instruction, that not less than twenty teachers desire to assemble for the purpose of holding a teachers' institute in said county, to remain in session not less than six working days, he shall appoint the time and place of said meeting, and give due notice thereof to the county superintendent; and for the purpose of defraying the expenses of said institute, there is hereby appropriated, out of any moneys in the state treasury not otherwise appropriated, a sum not exceeding fifty dollars annually for one such institute in each county held as

aforesaid, which the said superintendent shall immediately transmit to the county superintendent in whose county the institute shall be held, who shall therewith defray the necessary expenses of the institute, and, if any balance remains, he shall pay the same into the county treasury, and the same shall be credited to the teachers' fund.

STATE UNIVERSITY.

SEC. 1585. The objects of the state university, established by the constitution at Iowa City, shall be to provide the best and most efficient means of imparting to young men and women on equal terms, a liberal education and thorough knowledge of the different branches of literature, the arts and sciences, with their varied applications. The university, so far as practicable, shall begin the courses of study in its collegiate and scientific departments, at the points where the same are completed in high schools; and no student shall be admitted who has not previously completed the elementary studies, in such branches as are taught in the common schools throughout the state.

SEC. 1586. The university shall never be under the exclusive control of any religious denomination whatever.

SEC. 1587. (As amended by Chap. 147, Laws of 1876.) The university shall be governed by a board of regents, consisting of the governor of the state, who shall be president of the board by virtue of his office, the superintendent of public instruction, who shall be a member by virtue of his office, and the president of the university, who shall also be a member by virtue of his office, together with one person from each congressional district of the state, who shall be elected by the general assembly.

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SEC. 1589. The university shall include a collegiate, scientific, normal, law, and such other departments, with

such courses of instruction and elective studies as the board of regents may determine; and the board shall have authority to confer such degrees, and grant such diplomas and other marks of distinction as are usually conferred and granted by other universities.

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SEC. 1596. The board of regents shall enact laws for the government of the university, and shall appoint a president and the requisite number of professors and tutors, together with such other officers as they may deem expedient, and shall determine the salaries of such officers the compensation of the secretary and treasurer, and the amount of fees to be paid for tuition. They shall remove any officer connected with the university, when, in their judgment, the good of the institution requires it.

SEC. 1597. The board of regents is authorized to expend such portion of the income of the university fund as it may deem expedient, in the purchase of apparatus, library, and a cabinet of natural history, in providing suitable means to keep and preserve the same, and in procuring all other necessary facilities for giving instruction.

SEC. 1598. All specimens of natural history and geological and mineralogical specimens, which are or hereafter may be collected by the state geologist of Iowa, or by any others appointed by the state to investigate its natural history and physical resources shall belong to and be the property of the state university, and shall form a part of its cabinet of natural history, which shall be under the charge of the professor of that department.

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SEC. 1600. The president of the university shall make a report on the fifteenth day of September preceding the meeting of the general assembly, to the board of regents,

which shall exhibit the condition and progress of the institution in its several departments, the different courses of study pursued therein, the branches taught, the means and methods of instruction adopted, the number of students, with their names, classes, and residences, and such other matters as he may deem proper to communicate.

SEC. 1601. The board of regents shall, on the first day of October preceding each regular meeting of the general assembly, make a report to the superintendent of public instruction, which report, with that of the president of the university, shall be embodied in the said superintendent's report to the general assembly. The report of the board of regents shall contain the number of professors, tutors, and other officers, with the compensation of each, the condition of the university fund, and the income received therefrom, the amount of expenditures, and the items thereof, with such other information and recommendations as they may deem expedient to lay before the general assembly.

COUNTY HIGH SCHOOLS.

SEC. 1697. Each county having a population of two thousand inhabitants or over as shown by the last state or federal census, may establish a high school on the conditions and in the manner hereinafter prescribed, for the purpose of affording better educational facilities for pupils more advanced than those attending district schools, and for persons desiring to fit themselves for the vocation of teaching.

EC. 1698. When one-third of the electors of a county, as shown by the returns of the last preceding election, shall petition the board of supervisors requesting that a county high school be established in their county at the place in said petition named, then, or when said board in

its discretion shall deem proper, said board shall give twenty days' notice previous to the next general election, or previous to a special election duly called for that purpose, that they will submit the question to the electors of said county whether such high school shall be established; at which election said electors shall vote by ballot, for or against establishing such county high school. The notice contemplated in this section shall be given through one or more newspapers published in said county, if any be published therein, and by at least one written or printed notice to be posted in each township.

SEC. 1699. After said election, the ballots on said question shall be canvassed in the same manner as in the election for county officers: and if a majority of all the votes cast on said question shall be in favor of establishing said school, the board of supervisors shall immediately proceed to appoint six persons, who shall be residents of the county, but not more than two of whom shall be residents of the same township, who shall, with the county superintendent of common schools, constitute a board of trustees for said high school. Each of said trustees appointed as aforesaid shall hold his office until his successor is elected and qualified, and shall be required, within ten days after appointment, to qualify by taking the oath of office, and giving such bond as may be required by the said board of supervisors, for the faithful discharge of his duties.

SEC. 1700. At the next general election after said appointment, there shall be elected in said county six high school trustees, who shall be divided into three classes of two each; each class to hold their office one, two, and three years, respectively, and their respective terms to be decided by lot. And each year thereafter there shall be two such trustees elected to succeed those whose term is

about to expire. And said trustees shall qualify and enter upon the duties of their office in the same manner, and at the same time as other county officers.

SEC. 1701. The county superintendent shall, by virtue of his office, be president of said board of trustees, and at their first meeting in each year, they shall appoint from their own number a secretary and treasurer, who shall perform the usual duties devolving upon such officers for the term of one year, or until their successors are appointed to take their places.

SEC. 1702. At said meeting, or at some succeeding meeting called for such purpose, said trustees shall make an estimate of the amount of funds needed for building purposes, for payment of teachers' wages, and for contingent expenses, and they shall present to the board of supervisors a certified estimate of the rate of tax required to raise the amount desired for such purposes. But in no case shall the tax for such purposes exceed in one year the amount of five mills on the dollar on the taxable property of the county, and, when the tax is levied for the payment of teachers' wages and contingent expenses only, shall not exceed two mills on the dollar.

SEC. 1703. The said tax shall be levied and collected in the same manner as other county taxes, and when collected the county treasurer shall pay the same to the treasurer of the county high school, in the same manner that school funds are paid to the district treasurers as required by law.

SEC. 1704. The said treasurer of the high school shall give such additional bond as the board of trustees may deem sufficient, and receive all moneys from the county treasurer, and from other parties, that belong to the funds of said school, and pay the same out only by direction of the board of trustees, upon orders duly executed

by the president countersigned by the secretary thereof, stating the purpose for which they were drawn. Both the secretary and treasurer shall keep an accurate account of all moneys received and expended for said school; and at the close of each year, and as much oftener as required by the board, they shall make a full statement of the financial affairs of the school.

SEC. 1705. The said board of trustees shall proceed as soon as practicable after their appointment as aforesaid, to select the best site, in accordance with the vote of the county, that can be obtained without expense to the same, and the title thereof shall be vested in said county. They shall then proceed to make such purchases of material, and to let such contracts for their necessary school buildings, as they may deem proper, but shall not make any purchase or contract in any year to exceed the amount on hand, and to be raised by the levy of tax that year.

SEC. 1706. When said board of trustees shall have furnished a suitable building for the school, they shall employ some competent teacher to take charge of the same, and furnish such assistant teachers as they deem necessary, and provide for the payment of their salaries. As far as practicable, model schools shall be encouraged; and advanced students, and those preparing to become teachers, may be employed a portion of their time in teaching the younger pupils, in order that they may become familiar with the practice as well as theory of successful school teaching, and also avoid, as far as practicable, the expense of employing other assistant teachers.

SEC. 1707. Tuition shall be free to all pupils of such school residing in the county where the same is located. The board of trustees, however, shall make such general rules and regulations as they deem proper in regard to

age and grade of attainments essential to entitle pupils to admission in the school. If there should be more applicants than can be accommodated at any time, each district shall be entitled to send its equal proportion of pupils, according to the number of pupils it may have, as shown by the last report to the county superintendent of common schools. And the boards of the respective school districts shall designate such pupils as may attend.

SEC. 1708. If, at any time, the school can accommodate more pupils than apply for admission from that county, the vacancies may be filled by applicants from other counties, upon the payment of such tuition as the board of trustees may prescribe; but at no time shall such pupils continue in said school to the exclusion of pupils belonging in the county in which such high school is situated.

SEC. 1709. The principal of any such high school, with the approval of the board of trustees, shall make such rules and regulations as he deems proper in regard to the studies, conduct and government of the pupils under his charge, and if any such pupils will not conform to and obey the rules of the school, they may be suspended or expelled therefrom by the board of trustees.

SEC. 1710. The said board of trustees shall annually make a report to the board of supervisors of their county, which shall specify the number of students, both male and female, who have been in attendance at the county high school during the year, the branches of learning taught, the text-books used, the number of teachers employed, the amount of salary paid to them, the amount expended for library and apparatus, and for buildings and all other expenses; also, the amount of funds on hand, debts unpaid, and other information deemed important or expedient to report. Said report shall be

printed in at least one newspaper in the county, if any is published therein, and a copy of the report shall be forwarded to the state superintendent of public instruction.

SEC. 1711. The board of supervisors shall have power to fill any vacancy that may occur in the board of trustees of that county, by appointment, until the next general election, and a majority of such board of trustees shall be a quorum for the transaction of business.

SEC. 1712. The board of supervisors may allow each member of the board of trustees the sum of two dollars per day for the time actually employed in the discharge of his official duties, and when such accounts are presented for payment, they shall be audited and paid out of the county treasury, in the same manner as other accounts against the county, and said trustees shall not be entitled to any further remuneration for services or expenses.

CHAPTER 64, LAWS OF 1874.

Laws of the Fifteenth, Sixteenth, Seventeenth, and Eighteenth General Assemblies.

INDUSTRIAL EXPOSITIONS IN SCHOOLS.

SECTION 1. It shall be the duty of the board of directors of independent school districts, and the sub-director of each subdistrict, if they should deem it expedient, under the direction of the county superintendent, to introduce and maintain an industrial exposition in connection with each school under their control within this state.

SEC. 2. These expositions shall consist of useful articles made by the pupils, such as samples of sewing,

and cooking of all kinds, knitting, crocheting, and drawing, iron and wood-work of all kinds, from a plain box or horseshoe to a house or steam-engine in miniature; also, all other useful articles known to the industrial world, or that may be invented by the pupils, in connection with farm and garden products in their season, that are the results of their own toil.

SEC. 3. The pupils shall be required to explain the use and method of their work, and kind and process of culture of farm and garden products.

SEC. 4. The parents and friends of pupils shall be allowed and requested to be present at said expositions.

SEC. 5. Ornamental work shall be encouraged when accompanied by something useful made by the same pupil.

SEC. 6. These expositions shall be held in the school room upon a school day as often as once a term, and not oftener than once a month.

CHAPTER 67, LAWS OF 1874.

VOTING ON SCHOOL TAXES.

SECTION 1. All school districts lying in two adjoining counties shall have the right to vote mills, instead of specific sums, for school purposes.

CHAPTER 129, LAWS OF 1876.

(As amended by Chapter 142, Laws of 1878.)

STATE NORMAL AND TRAINING SCHOOL.

SECTION 1. A school for the special instruction and training of teachers for the common schools of this

state is hereby established at Ceder Falls, in Black Hawk county.

SEC. 2. The school shall be under the management and control of a board of directors consisting of six members, no two of whom shall be from the same county. They shall be elected by the general assembly, two for two years, two for four years, and two for six years, and the general assembly shall elect two members of said board every two years, for the full term of six years as the terms of office of the respective classes expire. Their term of office shall commence on the 1st day of June following their election. No member of the board shall be a teacher in the school or receive other compensation for his services than a re-imbursement of his actual expenses to be certified to by him and paid out of the state treasury. Any vacancy occurring in the board shall be filled by the appointment of the governor.

SEC. 3. The board shall convene at the call of the superintendent of public instruction on or before June 15, 1876, and having each qualified according to law, shall organize by the election of a president and vice-president from their number, and a secretary and a treasurer, who shall be persons not members of the board. The secretary shall receive such compensation as may be fixed by the board not to exceed the sum of one hundred dollars and actual traveling expenses. The treasurer shall receive re-imbursement of actual expenditures.

SEC. 4. The board shall require a bond in the sum of twenty thousand dollars of the treasurer with proper and sufficient sureties, conditional for the safe keeping of funds coming into his hands. He shall receive and disburse all moneys hereby appropriated, and any other funds as the board may provide. The board may require

of any officer or employe who may be authorized to receive or pay out money a like bond.

SEC. 5. It shall be the duty of the board, in every necessary manner with the means at their disposal, to provide for and carry out the object for which the school is established. For that purpose they shall employ competent and suitable teachers, and other employes. They shall direct, use, and control all the property of the state coming into their hands for that purpose. They shall control and direct the expenditure of all moneys. They shall make all necessary rules for the management of the school and the government thereof, and shall provide for the admission of pupils from the several counties of the state in proportion to their respective population and upon the appointment of respective boards of supervisors, or as the board may direct. They shall establish and publish uniform rules for the admission of pupils thereto and such rules shall provide for equal rights in said school to all the teachers in the state, but they shall require in all cases satisfactory evidence of the good character of the pupil. They shall also further require all pupils upon their admission to the school to sign a statement of their intention in good faith to follow the business of teaching in the schools of the state. It shall also be the duty of the board to make all possible and necessary arrangements with the means at their disposal for the boarding and lodging of pupils, but the pupils shall pay the cost of the same. They shall require each pupil to pay a fee for contingent expenses amounting to not more than one dollar per month. The school shall be open during such part of the year as the board shall determine but the session shall continue at least twenty-six weeks. The board of directors may in their discretion charge the pupils with a tuition fee not exceeding six

dollars per term, if such charge shall be necessary in order to the proper support of the school as provided by law.

SEC. 6. At the close of the year, and on or before the first day of July, 1876, it shall be the duty of the board of trustees of the Iowa soldiers' orphans' home, to deliver over to the board of directors provided for herein, the buildings and grounds at Cedar Falls, Iowa, now occupied by said home, transferring for that purpose the inmates of said home to the home at Davenport. They shall also at the same time turn over in like manner all the personal property at said home at Cedar Falls, except such as is necessary for, and adapted to, the personal use of such inmates at Davenport, and a careful inventory and appraisalment thereof shall be made, and a proper voucher given therefor by said board of directors.

SEC. 7. The board of directors shall at once proceed to make such improvements and changes in said buildings and grounds as may be necessary to adapt the same to the use of said school, but without greater expense to the state than is provided for in this act, and shall, on or before September 10, 1876, open the same to the use and instruction of pupils.

SEC. 8. In addition to the property, the use of which is hereby set apart for the purposes of the school, the following sums are hereby appropriated for the establishment and maintenance thereof:

For necessary improvement and repairs, three-thousand dollars.

For salaries of teachers and employes, ten thousand dollars.

For contingent expenses, fifteen hundred dollars.

The amount appropriated for repairs and improvements may be paid at any time, on the order of the board; the

remaining sums shall be paid in equal quarterly payments, commencing September 1, 1876.

SEC. 9. The said board shall make, at the end of each school year to the superintendent of public instruction, a detailed report of their proceedings during the year. Their report shall also contain the number of teachers employed in the school, with the compensation of each; the number of pupils, classified; the amount of receipts and expenditures and the items thereof, with such other information and recommendations as they may deem expedient, which report shall be embodied in the superintendent's report to the general assembly.

CHAPTER 136, LAWS OF 1876.

WOMEN ELIGIBLE TO SCHOOL OFFICES.

SECTION 1. No person shall be deemed ineligible by reason of sex, to any school office in the state of Iowa.

SEC. 2. No person who may have been or shall be elected or appointed to the office of county superintendent of common schools or school director in the state of Iowa, shall be deprived of office by reason of sex.

CHAPTER 132, LAWS OF 1878.

ISSUANCE OF BONDS BY SCHOOL DISTRICTS TO FUND JUDGMENT INDEBTEDNESS.

SECTION 1. Any school district against which judgments have been rendered prior to the passage of this act, and which judgments remain unsatisfied, may, for the purpose of paying off such judgments and funding

such judgment indebtedness, issue upon the resolution of the board of directors of the district, the negotiable bonds of such district, running not more than ten years, and bearing a rate of interest not exceeding ten per centum per annum, payable semi-annually, which bonds shall be signed by the president of the district, and countersigned by the secretary, and shall not be disposed of for less than their par value, nor for any other purpose than that provided for by this act, and such bonds shall be binding and obligatory upon the district.

SEC. 2. It shall be the duty of the board of directors of any district which shall issue bonds under this act, to provide for the payment of the same by the levy of tax therefor, in addition to the other taxes provided by law, and they are hereby required to levy such an amount each year as shall be sufficient to meet the interest on such bonds promptly as it accrues.

SEC. 3. The bonds issued under this act shall be in the name of the district and in substantially the same form as is by law provided for county bonds; shall be payable at the pleasure of the district; shall be registered in the office of the county auditor; shall be numbered consecutively and redeemed in the order of their issuance.

CHAPTER 133, LAWS OF 1878.

(As amended by Chapter 131, Laws of 1880.)

SUBDIVISION OF INDEPENDENT SCHOOL DISTRICTS.

SECTION 1. Any independent school district, organized under any of the laws of this state, may subdivide, for the purpose of forming two or more independent school districts, or have territory detached to be

annexed with other territory in the formation of an independent district or districts, and it shall be the duty of the board of directors of said independent district to establish the boundaries of the districts so formed, the district so formed not to contain less than four government sections of land each ; this limitation shall not apply when, by reason of a river or other obstacle, a considerable number of pupils will be accommodated by the formation of a district containing less than four sections, or where there is a city, town or village within said territory of not less than one hundred inhabitants, and in such cases the independent district so formed shall not contain less than two government sections of land, such subdivision to be effected in the manner provided for in sections 2, 3 and 4 of this chapter: *provided*, that when either of the districts so proposed to be formed contains less than four government sections, it shall require a majority of the votes of each of the proposed districts to authorize such subdivision.

SEC. 2. At the written request of one-third of the legal voters residing in any independent school district, the board of directors of said independent district shall call a meeting of the qualified electors of the independent district, at the usual place of holding their meeting, by giving at least ten days' notice thereof by posting three notices in the independent district sought to be divided, and by publication in a newspaper, if one be published in the independent district, at which meeting the electors shall vote by ballot for or against such subdivision.

SEC. 3. Should a majority of the votes be cast in favor of such subdivision, the board or boards of directors shall call a meeting in each independent district so subdivided or formed as aforesaid for the

purpose of electing by ballot three directors, who shall hold their offices one, two and three years respectively, the length of their respective terms to be determined by lot; and but one director shall be chosen annually thereafter, who shall hold his office for three years.

SEC. 4. At the meeting of the electors of each independent school district, as provided in the last section; they shall also determine by ballot the name to be given to their district, and each independent district, when so organized, shall be a body corporate, and the name so chosen shall be its corporate name; *provided*, that the board of directors of any district organized under the provisions of this act may change its name if any other district in the township shall have chosen the same name.

SEC. 5. Independent districts organized under the provisions of this act shall be governed by the laws relating to independent districts.

CHAPTER 166, LAWS OF 1878.

TUITION OF PAUPER CHILDREN.

SECTION 1. Section 1381 of the Code is hereby amended by adding at the end of the section: The expense of the poor-house shall include such an amount of tuition for the instruction of the pauper children as the whole number of days' attendance of such pauper children is to the total number of days' attendance in the school at which such pauper children attend, and such amount shall be paid into the treasury of the district where said children attend.

CHAPTER 8, LAWS OF 1880.

SEPARATE POLLING PLACES.

SECTION 1. Independent school districts having a population of not less than fifteen thousand inhabitants shall be divided into not less than three, nor more than six election precincts, in each of which a poll shall be held at a convenient place to be appointed by the board of directors, for the reception of the ballots of the electors residing in such precinct at said election.

SEC. 2. The board of directors shall provide for the submission of all questions relating to the powers reserved to the electors under section 1807 of the Code, which questions shall be decided by ballot, returns to be made on questions submitted as hereinafter provided.

SEC. 3 A register of the electors residing in each precinct shall be prepared by the board of directors from the register of the electors of any city, town or township which is in whole or in part included within such independent school district; and for that purpose a copy of such register of electors shall be furnished by the clerk of each such city, town or township to the board of directors. Said board shall, in each year before the annual election for directors, revise and correct such school election registers by comparison thereof with the last register of elections for such cities, towns and townships. And the register provided for by this section shall have the same force and effect at elections held under this act, and in respect to the reception of votes at said elections, as the register of elections has by law at general elections.

SEC. 4. Notice of every election under this act shall be given in each district in which the same is to be held, by the secretary thereof, by posting up the same in three

public places in such district and by publication in a newspaper published therein for two weeks preceding such election ; such notice shall also state the respective election precincts, and the polling place in each precinct.

SEC. 5. The board of directors shall appoint one of their own number and another elector of the district to act as judges of election, and a clerk for each polling place, who shall be sworn as provided by section 609 of the Code in case of general elections. The polls shall be open from 9 o'clock A. M. to 6 o'clock P. M. If either of the judges, or clerk, fail to attend, his place may be filled by the others by appointing an elector attending in his place, and if all fail to attend in time, or refuse to serve or be sworn, the electors present shall choose two judges and a clerk from the electors attending. A ballot-box and the necessary poll-book shall be provided by the board of directors for each precinct, and the election shall be conducted in the same manner, and under the same rules and regulations, so far as applicable, as provided by chapter 3 of title V of the Code, for general elections.

SEC. 6. The judges of election and clerk in each precinct shall canvass the vote therein, and shall as soon as possible, make out, sign and return to the secretary of the district a certificate showing the whole number of votes cast in such precinct, and the number of votes in favor of each person voted for, and questions submitted. The board of directors shall meet on the next Monday after the election and canvass the returns, and ascertain the result of the election. The whole number of votes cast, and the number in favor of each person voted for shall be entered in their record, and the persons respectively receiving the highest two numbers of votes shall be declared elected, and all questions submitted receiving a

majority of votes cast shall be recorded as carried. The secretary shall issue to each person so elected a certificate of his election.

SEC. 7. All acts and parts of acts inconsistent with this act are hereby repealed.

CHAPTER 12, LAWS OF 1880.

LOAN AND MANAGEMENT OF THE PERMANENT SCHOOL FUND.

SECTION 1. The rate of interest on all permanent school funds loaned after January 1, A. D. 1880, shall not exceed eight per cent per annum from date of such loan.

SEC. 2. Interest not paid when due shall bear interest at the same rate as the principal.

SEC. 3. After July 1, A. D. 1880, the counties having permanent school funds in control shall be charged only six per cent, instead of eight per cent, as now provided by the Code.

SEC. 4. Section 1846 of the Code is hereby amended by striking out the words "ten per cent," in the sixteenth and seventeenth lines, and inserting in lieu thereof the words "eight per cent."

SEC. 5. Section 1873 of the Code is hereby amended by adding at the end of the section the following; "But in no case to exceed ten per cent on the amount for which judgment is rendered; and in no case to exceed the sum of twenty-five dollars."

SEC. 6. Loans may hereafter be made to one person, or one company, to the amount of one thousand dollars; *provided*, it is found impracticable to keep the whole

amount of the funds loaned in sums of five hundred dollars or less.

SEC. 7. All laws inconsistent with this act are hereby repealed.

CHAPTER 51, LAWS OF 1880.

To Enable School Districts or District Townships to Issue Bonds for the Purpose of Funding Judgment Indebtedness now Existing, Additional to Code, Title XII, Chapter 9.

SECTION 1. Any school district or district township against which judgments have been rendered prior to the passage of this act, and which such judgments remain unsatisfied, may, for the purpose of paying off such judgment indebtedness, issue negotiable bonds of such district township, upon a resolution of the board of directors of the district township, running not more than ten years, and bearing a rate of interest not exceeding eight per cent per annum, payable semi-annually, which bonds shall be signed by the president of the district and countersigned by the secretary, and shall not be disposed of for less than their par value, nor for any other purpose than that provided by this act, and such bonds shall be binding and obligatory upon the district township.

SEC. 2. It shall be the duty of the board of directors of any district township which issues bonds under this act, to provide for the payment of the same by the levy of tax therefor, in addition to the other taxes provided by law; and they are hereby required to levy such an amount each year as shall be sufficient to meet the interest on such bonds promptly as it accrues.

SEC. 3. The bonds issued under this act shall be in the name of the district township and in substantially the same form as is by law provided for county bonds; shall be payable at the pleasure of the district township; shall be registered in the office of the county auditor; shall be numbered consecutively and redeemed in the order of their issuance.

CHAPTER 132, LAWS OF 1880.

Authorizing Independent School Districts or District Townships to Fund their Outstanding Bonded Indebtedness, and to Provide for the Payment of the Same.

SECTION. 1. Any independent school district, or district township, now or hereafter having a bonded indebtedness outstanding, is hereby authorized to issue negotiable bonds at any rate of interest not exceeding seven per cent per annum, payable semi-annually, for the purpose of funding said indebtedness; said bonds to be issued upon a resolution of the board of directors of said district; *provided*, that said resolution shall not be valid unless adopted by a two-thirds vote of said directors.

SEC. 2. The treasurer of such district is hereby authorized to sell the bonds provided for in this act, at not less than their par value, and apply the proceeds thereof to the payment of the outstanding bonded indebtedness of the district, or he may exchange such bonds for outstanding bonds, par for par; but the bonds hereby authorized shall be issued for no other purpose than the funding of outstanding bonded indebtedness. The actual cost of the engraving and printing of such bonds shall be paid for out of the contingent fund of such district.

SEC. 3. Said bonds shall run not more than ten years and be payable at the pleasure of the district after five years from the date of their issue; *provided*, that in order to stop interest on them the treasurer shall give the owner of said bonds ninety days' written notice of the readiness of the district to pay, and the amount it desires to pay; said notice to be directed to the post-office address of the owner of the bonds; *provided, further*, that the treasurer shall keep a record of the parties to whom he sells the bonds, and their post-office address, and notice sent to the address as shown by said record shall be sufficient.

SEC. 4. Said bonds shall be in denominations of not less than one hundred dollars and not more than one thousand dollars; and said bonds shall be given in the name of the independent district, or district township, and signed by the president, and countersigned by the secretary thereof; and the principal and interest may be made payable wherever the board of directors may by resolution determine.

SEC. 5. When said bonds are delivered to the treasurer to be negotiated, the president shall take his receipt therefor, and the treasurer shall stand charged on his official bond with the amount of the bonds so delivered to him.

SEC. 6. The tax for the payment of the principal and interest of said bonds shall be raised as provided in section 1823, chapter 9, title XII of the Code; *provided*, that if the district shall fail or neglect to so levy said tax the board of supervisors of the county in which said district is located shall, upon the application of the owner of said bonds, levy said tax.

SEC. 7. All acts and parts of acts in conflict with this act are hereby repealed.

CHAPTER 111.

Laws of the Nineteenth General Assembly.

LAWS OF 1882.

AN ACT to legalize contracts made by school officers for the insurance of school buildings, and to legalize warrants or orders issued therefor.

WHEREAS, Subdirectors and officers of school boards in various school districts and district townships within this state have insured their respective school-houses against loss by fire, and issued orders or warrants therefor, believing that they had the authority of law so to do; therefore,

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That any and all contracts heretofore made by subdirectors, or by any board of directors or officers of any district township or of any independent school district within this state for insuring school-houses or school furniture against loss by fire within their respective districts, and all insurance policies issued in pursuance of such contracts, be and the same are hereby made as valid, legal, and binding as though such directors and school officers had been authorized by law to make such contracts for insurance.

SEC. 2. That all warrants, orders, or other evidences of indebtedness heretofore issued by the officers of any school districts within this state for the insurance of school-houses and school furniture be, and the same are hereby made as legal, binding, and valid as though the law had authorized the issue and making of the same by such officers.

CHAPTER 118.

AN ACT to include all the territory of an incorporated city or town within the independent school district, or districts, now existing, or hereafter to be formed.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That all the territory of an incorporated city or town, whether included within the original incorporation or afterwards attached thereto in accordance with the provisions of law, shall be or become a part of the independent district, or districts, of said city or town.

SEC. 2. When boundaries are changed by the taking effect of this act, the respective boards of directors shall make an equitable settlement of the then existing assets and liabilities of their districts, as provided for by section 1715 of the Code.

CHAPTER 149.

AN ACT to enable boards of directors of independent school districts to insure school property.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That the board of directors of any independent school district, organized under any of the laws of this state, may use unappropriated contingent funds for the purpose of effecting an insurance on the school property of their district; but they may contract no debts for this purpose.

CHAPTER 167.

AN ACT to create a state educational board of examiners, and to encourage training in the science and art of teaching.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. The superintendent of public instruction, the president of the State University, the principal of the

State Normal School, and two persons, to be appointed by the executive council, one of whom shall be a woman, for terms of four years: *provided*, that of the two first appointed, one shall be for two years; *and provided further*, that no one shall be his own successor in said appointments; are hereby constituted a State board of examiners, with the superintendent of public instruction as *ex officio* its president.

SEC. 2. The board shall meet at such times and places as its president shall direct for transaction of business, and shall hold annually at least two public examinations of teachers, at each of which examinations one member of the board shall preside, assisted by such well qualified teachers, not to exceed two in number, as the board of examiners may elect. Said board may adopt such rules, not inconsistent herewith and with the statutes of Iowa, as they may deem proper; and said board shall keep a full record of their proceedings, and a complete register of all persons to whom certificates and diplomas are issued.

SEC. 3. Said board shall have power to issue state certificates and state diplomas to such teachers as are found, upon examination, to possess good moral character, thorough scholarship, clear and comprehensive knowledge of didactics, and successful experience in teaching.

SEC. 4. Candidates for state certificates shall be examined upon the following branches: Orthography, reading, writing, arithmetic, geography, English grammar, book-keeping, physiology, history of the United States, algebra, botany, natural philosophy, drawing, civil government, constitution and laws of Iowa, and didactics; and candidates for state diplomas shall pass examination upon all branches required by candidates for state certificates, and in addition thereto in geometry, trigonometry,

chemistry, zoology, geology, astronomy, political economy, rhetoric, English literature and general history, and such other branches as the board of examiners may require.

SEC. 5. A state certificate shall authorize the person to whom it is issued to teach in any public school of the state for the term of five years from the date of its issue, and a state diploma shall be valid for the life of the person to whom it is issued; *provided*, that any state certificate, and any state diploma, may be revoked by the board of examiners for any cause of disqualification, on well-founded complaint entered by any county superintendent of schools.

SEC. 6. The fee for each state certificate shall be three dollars, and for each state diploma five dollars, which fee shall be paid before examination to such person as the board of examiners may designate from their own number, and the same shall be paid into the state treasury when so collected; *provided*, that if said applicant shall fail in said examination one-half of the fee shall be returned.

SEC. 7. Every holder of a state certificate, or of a state diploma, shall have the same registered by the county superintendent of schools of the county in which he wishes to teach, before entering upon his work, and each county superintendent of schools is required to include in his annual report to the superintendent of public instruction, a full account of the registration of state certificates and diplomas.

SEC. 8. Each member of the state educational board of examiners, and each person appointed by said board to assist in conducting examinations, as provided for in section 2 of this act, shall be entitled to receive for the time actually employed in such service his necessary expenses. *And provided further*, that each member of said board, not a salaried officer, shall, in addition to his

necessary expenses, receive the sum of three dollars per day he or she is actually employed in said examination, which amounts shall be certified by the superintendent of public instruction; and the auditor of state is hereby authorized to audit and draw his warrant for the same upon the treasurer of state, provided the aggregate amount for any one year shall not exceed three hundred dollars.

SEC. 9. The board of examiners shall keep a detailed and accurate account of all moneys received and expended by them, which, with a list of the names of persons receiving certificates and diplomas, shall be published by the superintendent of public instruction in his annual report.

CHAPTER 103, LAWS OF 1884.

Prohibiting the use of Barb Wire.

SECTION 1. It is hereby made the duty of the board of directors of every independent district and every district township to remove before the first day of September, A. D. 1884, any barb wire fence enclosing in whole or in part any public school grounds in such district, and it is also made the duty of any person owning or controlling any barb wire fence within ten feet of any public school grounds to remove the same within the time herein above named.

SEC. 2. Hereafter barb wire shall not be used in enclosing in whole or in part any public school building or the grounds upon which the same may stand; and no barb wire shall be used for a fence or other purpose within ten feet of any public school ground.

SEC. 3. For a failure or neglect on the part of any board of directors of any independent district or of any district township to carry out the provisions of this act any member of such board shall be fined, on conviction, not exceeding twenty-five dollars. Any person violating the provisions of this act shall, on conviction thereof be fined not exceeding twenty-five dollars.



PART II.

SCHOOL LAWS OF IOWA.

*Notes of Department of Public Instruction.**

SCHOOL DISTRICTS.

SECTION 1713. The design of the law is that civil and district township boundaries shall coincide. When new civil townships are formed, the corresponding changes in district township boundaries take effect at the next subdistrict election. See sections 1715 and 1796.

SEC. 1714. In case the board is reduced below a quorum, by resignation or otherwise, the township trustees should call a special election to fill the vacancies. The ballots in such election, in independent districts, should indicate in whose place the person voted for shall serve. In independent districts five notices should be posted, as provided in sections 1742 and 1801; in district townships, three notices are required in each subdistrict, as provided in section 1718.

SEC. 1715. (a) New district townships are not organized until the first Monday in March after the election of officers of the civil townships.

(b) When subdistricts are divided by changes in civil township boundaries, the old board should incorporate the several parts with other subdistricts, or otherwise provide for such territory, so that all electors may vote at the following subdistrict election; in the absence of such action, the territory properly belongs to the subdistrict which it adjoins, and the electors are entitled to vote therein. The boundaries of subdistricts lying wholly within the old or new districts, are not affected by the division of civil townships.

*The Section numbers here refer to the Section numbers in Text of School Laws, Part I.

(c) Five days before the time for the regular subdistrict election (first Monday in March) written notices should be posted in three public places in each subdistrict, in both the old and new townships, by the resident subdirector; in subdistricts, where there is no subdirector, by the secretary.

(d) Assets include school-houses, sites, and all other property and moneys belonging to the district. Liabilities include all debts for which the district in its corporate capacity is liable. In determining the assets, school property should be estimated at its present cash value. Each fund should be divided separately between the districts, in proportion to the last assessed value of the property, real and personal. Any portion of the teachers' fund however, derived from the semi-annual apportionment, should be divided in proportion to the number of persons between the ages of five and twenty-one years, according to the last school enumeration.

(e) School-houses will usually become the property of the district in which they are situated. If their value exceeds the amount justly due the district, and there is not sufficient school-house fund on hand to equalize the division, the board should determine the amount which each district should receive or pay. Any equitable arrangement, which will be mutually satisfactory to the parties in interest, will be in accordance with the intent of the law. Any agreement that is entered into should be reduced to writing, and entered in the records of each of the districts interested.

(f) "The districts, after the division, which do not receive their just proportion of school-house property, have a claim against those that do obtain more than their due share. The last named are indebted to the first in the difference." *District Township of Williams v. District Township of Jackson*, 36 Iowa, 216.

If money is received by one which belongs to another, the rule is a general one that the law implies a promise on the part of the receiver to pay it over. Based upon this implied promise, an action may be maintained for its recovery. And this rule applies to corporations as to individuals. *District Township of Norway v. District Township of Clear Lake*, 11 Iowa, 506. In this case, the district township of Clear Lake having been divided so as to form two district townships, the following spring it

received all the funds apportioned by the clerk of the board of supervisors, and Norway brought suit and recovered a just portion of the same.

(g) A simple and just method of disposing of unpaid and delinquent taxes, also of all the funds in the hands of the county treasurer, and not available (see section 1785), is to direct the payment of such funds in such a manner that taxes derived from any part of the territory shall be paid to the district to which such territory will then belong.

SEC. 1716. In suits, contracts, and conveyances, the corporate name should be strictly observed. A subdistrict is not a corporation, and hence can neither hold property nor perform any corporate act.

DISTRICT TOWNSHIP MEETING.

SEC. 1717. (a) District townships are authorized to hold only one meeting in each year, except as provided by section 1717½. The meeting cannot be adjourned to another day. Ten days' previous notice of this meeting should be given by the district township secretary, section 1742; but as the law fixes the day of the meeting of the electors of the district township, and also of the subdistrict, a failure to give full notice, or any notice at all, though a violation of law, will not invalidate the proceedings of the meeting, if one be held at the usual time and place. *Dishon v. Smith*, 10 Iowa, 212.

(b) The president and secretary of the board are the regular officers of this meeting, and should act as such, if present. Sections 1739 and 1741.

(c) School-houses can not be sold without a previous vote of the electors, but their action in voting a tax for the erection of a new school-house on the old site gives the board authority to remove or dispose of the old house.

(d) If the electors, at the district township meeting on the second Monday in March, direct that any additional branches shall be taught in any or all of the schools in the district township, their action is *mandatory*, and the board are bound to endeavor in good faith to fulfill the wishes of the electors. Failing to do so, the board can be compelled by *mandamus* to show reason why they have not complied with the request of the electors.

(e) All school-house taxes must be voted by the electors of the

subdistrict, or district township; this power can not be delegated to the board. This vote may be taken by ballot, or *viva voce*.

The specific sum of money deemed necessary, and not a certain number of mills on the dollar, should be voted. The per centum necessary to raise this sum is determined by the board of supervisors. See sections 1777 and 1780.

(f) The tax for procuring district libraries can not be used to purchase text-books for the use of scholars. Money can only be paid out for the purchase of a district library which has been voted for that purpose by the electors at the regular March meeting.

(g) Any other mingling of funds than provided for in subdivision four is a violation of law.

(h) The electors frequently assume powers not granted to them by the law. They have only such powers as are specifically enumerated in the law.

SUBDISTRICT MEETING.

SEC. 1718. (a) "No district township or subdistrict meeting shall organize earlier than 9 A. M., nor adjourn before 12 M." Section 1789. The meeting should not be called later than 6 P. M. The law contemplates at least three hours for the election. *Iowa Reports*, 37, 131; 39, 381.

(b) No minor, non-resident nor alien can take part in a meeting of electors. To be entitled to the right of suffrage a person must be a male citizen of the United States, twenty-one years of age, a resident of the State six months next preceding the election, and of the county sixty days. Constitution, article 2, section 1. The election must be by ballot. Constitution, article 2, section 6.

(c) A person who acts as chairman at a school election is entitled to his vote as much as any other elector.

(d) Any election held by the people must be held on the day designated, and officers must be elected by a single ballot. The person receiving the greatest number of votes is elected, even though he has not received a majority of all the votes cast.

(e) The electors of a subdistrict may, at their regular meeting in March, determine what amount is required for the erection of a school-house in said subdistrict. A sum, in the aggregate, may

be voted, and the subdirector should certify the same to the next district township meeting held thereafter. Section 1778.

If the subdistrict does not wish to have such a tax levied upon themselves, they should simply prefer a request for a sufficient amount to build a school-house in their subdistrict.

(f) If subdistrict boundaries are in controversy by way of appeal, the election for subdirectors should be made on the basis of the status of the subdistricts on the day of election.

SEC. 1719. (a) The chairman and secretary are not required to qualify.

(b) Chapter 7, laws of eighteenth general assembly provides how a tie vote shall be decided.

SEC. 1720. (a) The board of directors of a district township cannot consist of less than three members. The subdirector from the district at large should be voted for at both subdistrict meetings. To avoid confusion the ticket should specify: *For subdirector, A. B.; for subdirector at large, C. D.*

(b) Where there is but one subdistrict in a district township the subdistrict meeting should be held at some central point, on the first Monday in March, for the election of three subdirectors, five days' notice of which should be given by the district secretary, as directed by section 1718; and another meeting will be held on the second Monday in March, as provided by section 1717, the powers and duties of the two meetings being entirely separate and distinct, the first being a subdistrict, the second a district township meeting.

BOARD OF DIRECTORS.

SEC. 1721. (a) The right or title to hold office can not be determined by an appeal to the county superintendent. The proper remedy for any person aggrieved by the action of the board relating thereto is a petition to the circuit or district court under the provisions of sections 3345-3352, Code.

(b) The failure or refusal of the proper officer to "issue a certificate to a person duly elected to an office (subdirector) cannot operate to deprive such person of his rights." "The certificate or commission is the best, but not the only evidence of an election, and if that be refused secondary evidence is admissible." McCrary on elections, section 171.

(c) Business done by the new board of directors on the second

Monday of March is void, because their term of office does not begin until the third Monday of March. All such business done, including the re-organization, should be re-enacted at a subsequent meeting to make it legal.

(d) It is quite customary for the outgoing board to meet on the third Monday in March and complete all their work, and for the new board to organize immediately thereafter. The legality or propriety of their doing so has never been questioned.

(e) Directors continue in office until the third Monday in March, and until their successors are elected and qualified. A president whose term as director has expired can take no further part in the proceedings of the board, even though a new president has not yet been chosen.

(f) Where the law requires a certain duty to be performed by the board upon a fixed day, as for instance the election of a secretary and a treasurer (see sections 1721 and 1802), an adjournment of the meeting to another fixed date will allow the transaction of the same business which was directed to be done on the day of the regular meeting.

(g) When the treasurer is chosen from the members of the board, under section 1721, his ceasing to be a member of the board in March does not terminate his relation as a treasurer of the district until September following.

(h) A person cannot remain an officer or member of the board of directors and reside in another district, even though in the same civil township.

(i) No person can hold two of the offices of the board at the same time.

(j) A member or officer of the board must have the qualifications of an elector, if a male; but no person shall be deemed ineligible, by reason of sex, to any school office. See chapter 136, laws of 1876.

BOARD OF DIRECTORS.

SEC. 1722. (a) The intention of the amendment is to authorize boards of directors of district townships to hold meetings in an independent district within the civil township. Chapter 44, laws of eighteenth general assembly, legalized all meetings of this kind heretofore held.

(b) Section 1738 provides that a majority of the board shall

constitute a quorum. Any duty imposed upon the board *as a body* must be performed at a regular or special meeting, and made a matter of record; The consent of the board to any particular measure, obtained of individual members when not in session, is not the act of the board, and is not binding upon the district township. If a contract is made without authority from the board, the individuals making such contract are personally liable.

(c) Special meetings should be convened by a written call, signed either by the president or a majority of the members and each member should be duly notified of the purpose of the meeting, as far as known.

SEC. 1723. (a) It is the duty of the board of directors to make contracts for the erection of school-houses, when the means have been provided by the electors. If the subdirector is appointed a committee for this purpose it should be with certain limitations, and the contract should be reported to the board for approval, as provided by section 1753. No member has authority to make a contract in behalf of the district, except under specific instructions of the board. Before making a contract great pains should be taken to obtain the best possible plan for the building. On this point the law requires consultation with the county superintendent.

(b) Contracts for the erection or repair of school-houses, or for material for the same, exceeding \$300, cannot be entered into until proposals have been published at least twenty-eight days. Repairs include seats, desks, etc.

(c) If members or officers of the board intentionally violate law they become personally liable. See Iowa Reports, 14, 510; 17, 155; 24, 337; and 38, 47. "If an agent make a valid contract without authority he is himself bound thereby." *Andrews & Co. v. Tedford*, 37 Iowa, 314. Contracts made in violation of the terms of this section are illegal. Their fulfillment may be prevented by injunction.

(d) Any unappropriated school-house funds may be disposed of by the electors, under section 1717, for improvements, such as fencing school-house sites, providing wells, etc., and the board, under section 1723, are required to carry out the vote of the electors.

(e) Any unappropriated school-house fund in the district

treasury may be used for the erection or repair of school-houses, at the discretion of the board, without action of the electors.

(f) A board of directors cannot form a partnership with any other party in the building of a school-house. School-houses are to be under the absolute control of the board. This does not prevent the receiving of donations and granting privileges under notes (i) and (k). Section 1753.

(g) The board cannot be required to commence the construction of a house until means to a reasonable extent have been provided. Boards should not involve the district in an indebtedness for the erection of school-houses, by contracts, or the issue of orders to exceed the amount voted by the electors.

(h) District townships have no authority to issue bonds or other evidences of indebtedness for the purpose of borrowing money. See opinion of attorney-general, *School Journal* for April, 1868, 210.

(i) No district can become indebted in any manner, or for any purpose, to an amount, in the aggregate, exceeding five per cent on the value of its taxable property. Constitution, article 11, section 3. *Winspear v. District Township of Holman*, 37 Iowa, 542.

(j) Public school-houses are exempt from sale on execution Code, section 3048.

(k) A board of directors of a school district may bind a corporation by contracts entered into after the election of their successors and before their qualification. *Dubuque Female College v. District Township City of Dubuque*, 13 Iowa, 555. While instances may occur in which the interests of the district will be subserved by making contracts with teachers and others, which will not expire for months after a change of officers, courtesy as well as justice dictates the impropriety of making contracts whose execution will embarrass successors in office. Ordinarily the new board should make contracts for the year during which they serve.

(l) The force and effect of any motion adopted by the board of directors does not terminate with a change of officers or members, but remain in force until repealed. *Thompson v. Linn*, 35 Iowa, 361.

(m) A board of directors may ratify or adopt such acts of officers *de facto* as the law would permit officers *de jure* to perform.

Dubuque Female College v. District Township City of Dubuque, 13 Iowa, 555.

(n) The board of directors can authorize any person or number of persons to perform an act which was within the power of the board.

SEC. 1724. (a) The power to locate sites for school-houses is vested, originally, exclusively in the board of directors. This authority should be exercised with great care, and without prejudice; and the wishes of the people for whom the house is designed, should be consulted as far as practicable, taking into account the prospective as well as the present convenience of the people of the subdistrict.

(b) A site near the center of the subdistrict should be chosen, unless controlling circumstances indicate a different selection. The site should contain not less than one acre of ground, ordinarily.

(c) The power of the board of directors to fix the site for a school-house carries with it the power to re-locate that site. The exercise of this power is a proper and necessary adjunct of the power to make alterations in the boundaries of the subdistricts. The extension of settlements frequently changes the centers of population and necessitates a change of subdistrict boundaries, and the removal of school-houses to central localities in the new subdistricts. *Vance v. District Township of Wilton*, 23 Iowa, 408

(d) Every new site must be selected on some public highway, at least forty rods from any residence, the owner whereof objects to its being placed nearer, and not in any orchard, garden, or public park, except in incorporated towns or cities. Section 1826. Sites located prior to April 26, 1870, when the provisions of this section took effect, are not affected by its provisions; the board may rebuild upon any such sites still in possession of the district.

(e) A school-house site, located by the county superintendent upon appeal cannot be changed by the board of directors, until the condition of the district is materially changed. But the fact that the superintendent has simply affirmed the action of the board in locating a site does not estop the board from re-locating the site whenever the interests of the district may require.

(f) Since a change of boundaries between subdistricts does not take effect until the subdistrict meeting in March, the board may

not move the school-house to accommodate the proposed new district until after that time.

(g) As regards the length of time during which schools are to be taught in each subdistrict, twenty-four weeks is the minimum. Section 1727. The maximum is unlimited, except as by section 1780, providing a limit in the amount of taxes for teachers' fund.

SEC. 1725. (a) All changes in subdistrict boundaries must be made in conformity with the provisions of sections 1738 and 1796.

(b) The board cannot form a subdistrict containing less than fifteen persons of school age, nor build a school-house for the accommodation of a less number, except in subdistricts formed prior to September 1, 1873, which are not affected by this proviso.

(c) No change can be made by the board which leaves any subdistrict with less than fifteen persons of school age.

(d) In an organized subdistrict, even though there are not fifteen persons of school age, a school must be held, unless the board are excused by the county superintendent. The board may discontinue a subdistrict by a re-adjustment of boundaries such change taking effect in March following.

(e) All the territory of a district township must be included in some subdistrict.

(f) A subdistrict is not a corporate body and has therefore no financial claims, nor can it be held liable for debts, except as a part of the district township.

(g) The board cannot provide an extra school for a less number than five persons of school age. The words pupils and scholars, as used in this section, mean persons between the ages of five and twenty-one years.

SEC. 1726 (a) The law does not prescribe the branches that shall be taught in the public schools, further than to require all teachers to be qualified to teach certain branches enumerated in section 1766. Boards of directors are empowered, by virtue of the authority to establish graded schools, and of the general supervisory and discretionary powers with which they are invested, to prescribe courses of study and branches to be taught in the schools of their district. A course of study should be prescribed by the board in every district, to which the electors may add

additional branches, as provided by section 1717. A graded school, open to the older and more advanced scholars from every subdistrict, may be advantageously established at some central point in every district township.

(b) In the absence of instruction by the electors, the board of directors should decide what branches, if any, besides those in a teacher's examination, shall be taught. But it is not within the province of individual parties to demand instruction outside of the branches usually taught.

(c) If it is understood that the principal of a school has charge of other rooms besides his own, he has the same power in managing the children that is by law given to teachers.

SEC. 1727 (a) The requirements of this section are *imperative*. A school *shall be taught* in each subdistrict, but if the county superintendent is fully satisfied, after a careful investigation of the facts, that it is impracticable, he may release the board of directors from their obligation. The board of directors may establish more than one school in a subdistrict, if necessary for the accommodation of the children, subject to the limitations contained in sections 1725 and 1780.

(b) Under section 1724, the board of directors have power to provide for a longer period of school than twenty-four weeks; this increase of time must apply alike to all the subdistricts, but does not apply to extra schools granted.

(c) When two school-houses are within the same district, or subdistrict, a school of three months in each, held at the same time, does not fulfill the requirements of the law, that a school of at least twenty-four weeks shall be taught in each subdistrict.

(d) The school year, for school purposes, should be regarded as beginning on the third Monday in March, when a new board of directors enter upon their duties.

(e) All the youth of the State, from five to twenty-one years of age, irrespective of religion, race, or nationality, are entitled to the same school facilities. While schools may be graded according to the proficiency of pupils, no discrimination based on color—such, for instance, as requiring colored pupils to attend separate schools—can be enforced. *Clark v. Independent District of Muscatine*, 24 Iowa, 266.

(f) Persons over twenty-one years of age are not entitled to the benefits of the public schools, except as provided in the latter

part of this section. If, however, the school is not full, they and non-residents may be admitted, in the discretion of the board, upon such equitable terms as the board may prescribe. Children under five years of age will be more injured by the confinement than benefited by the instruction. They cannot claim the advantages of the school, and should not be admitted.

SEC. 1728. (a) This section only implies the power of the board to adopt text-books for their schools, but to avoid the great variety of text-books used in the schools and too frequent changes of the same, we think the board should exercise their authority by adopting text-books, having due regard to those in common use.

(b) The change of any one text-book in the school does not prevent the board from changing any or all other books at a subsequent time. Neither the subdirector nor teacher has authority to change text-books.

c) The electors may not vote, nor the board appropriate, money for the purchase of text-books for the use of the district. The board are not prohibited from buying text books and selling them to scholars at cost, if the board choose to do so upon their own responsibility.

SEC. 1729. (a) Purchases under the provisions of this section, must be made by order of the board when in session.

(b) The supreme court, in a recent ruling, prohibit the use of contingent fund for any purpose except those mentioned in this section and in section 1748.

SEC. 1730. (a) A vacancy can be created only by death, removal, resignation, or failure to elect at the proper election, there being no incumbent to continue in office. Code, section 781. A failure to elect or to qualify does not create a vacancy, for the incumbent, whether elected or appointed, continues in office "until his successor is elected and qualified." Code, section 784. If the incumbent does not qualify, a vacancy exists. Code, sections 690 and 686. Neither does a change in the boundaries of subdistricts create a vacancy, for the change does not take effect until the next subdistrict election. If a subdistrict is divided, so as to form a new one, the subdirector will continue to act as though no change had been made, until the expiration of his official term. Section 1796, *proviso*, and note; also section 1721 and notes.

(b) If a person without the requisite qualifications, is elected a

member of the board and acts with the board, being a member *de facto*, his acts will be valid; but when his disqualification becomes known, the board should declare the place vacant and appoint his successor.

(c) School directors may resign at any time. A verbal resignation may be tendered to the board when in session, or a written resignation may be handed to some member of the board to be presented at a subsequent meeting, for the acceptance of the board. No person can be compelled to serve against his wishes.

(d) When a director habitually neglects the duties of his office, he may be compelled by *mandamus* to perform them.

(e) Boards of directors have no authority to remove any member or officer of the board. Such removal can be made only by the courts as provided by sections 746-750, Code of 1873.

(f) In case the board is reduced below a quorum by resignation, or otherwise, the township trustees should call a special election to fill ~ vacancies as provided by section 1714; see also section 1738.

SEC. 1731. (a) The law requires all official bonds to be secured by at least two sureties, who are freeholders, and whose aggregate property is double the amount of the bond; the oath of office to be subscribed on the back of the bond, or attached thereto, and the sureties to make affidavit that they are worth the amount named in the bond. Code, sections 249, 250, 675, and 679. As the bonds of the secretary and treasurer must be approved by the board, no member should become surety for these officers.

(b) Any officer whose duty it is to give bonds for the proper discharge of the duties of his office, and who neglects so to do, is guilty of a misdemeanor, and is liable to a fine. See section 684, Code of 1873.

(c) A board approving bonds which they know to be insufficient, do not discharge the duty incumbent upon them, and are liable under section 3965, Code of Iowa, on a charge of misdemeanor. See also, 14 Iowa, 510 and 18 Iowa, 153.

SEC. 1732. (a) The interests and protection of the tax-payers require that such settlement should be made at least twice a year, and more frequently if deemed necessary, and the settlement at the end of the term requires that the funds and property shall be produced and fully accounted for, and that these facts should be indorsed upon the bond of the treasurer, if he is re-elected. See

section 690, Code of 1873, as quoted in note (c) to section 1751, and also preface to these laws.

(b) This section contemplates that a full report of the affairs of the district shall be made by the board at each annual meeting of the electors. This work appropriately devolves upon the president unless the board designate some other member. When practicable, the report should be published.

SEC. 1733. (a) All demands, whether by contract or otherwise, must be approved by the board of directors when in session, before an order can be drawn on the district treasury, for them, and no officer can draw an order on the treasury, unless he is authorized to do so by a vote of the board, at a regular or special meeting. It is the duty of the board to examine all contracts for the employment of teachers, and the construction of school-houses, or for any other purpose, and to see that the stipulations have been complied with, before they authorize the payment of money thereon.

(b) The board may authorize the president and secretary to draw warrants for the payment of teachers' salaries at the end of each school month, upon proper evidence that the service has been performed, but the order for wages for the last month should not be drawn until the report required by section 1760, is filed in the office of the secretary.

(c) School orders issued without a vote of the board of directors, or otherwise illegally issued, although they may be signed by the president and countersigned by the secretary, are not binding upon the district; neither can they acquire validity by being transferred to third parties. If illegal when issued, they are illegal forever. 19 Iowa, 199 and 248.

(d) Only the secretary and treasurer can receive compensation for the discharge of duties required by law. Section 1738.

SEC. 1734. (a) Boards of directors have entire control of the public schools of their district and the teachers employed therein. The board may establish such rules and regulations for the government of teachers and pupils, not inconsistent with law, as the interests of the schools require. The teacher is the agent of the board, and the rules made and enforced by the teacher with either the formal or tacit consent of the board, are in effect the rules of the board. It is the duty of the teacher, under the direction of the board, to determine what branches shall be pursued by each pupil.

(b) Without special mention in the teacher's contract, it is understood that only the common branches are expected to be taught.

(c) It is competent for boards of directors to provide by rules that pupils may be suspended from the schools in case they shall be absent or tardy a certain number of times within a fixed period, except for sickness, or other unavoidable cause.

If the effects of acts done out of school-houses reach within the school room during school hours, and are detrimental to good order and the best interests of the pupils, it is evident that such acts may be forbidden. *Burdick & Chandler v. Babcock, et al.*, 31 Iowa, 562.

(d) Boards of directors can dismiss teachers only for good cause shown. In case the board pass an order to dismiss, the material reason therefor should be spread upon the record; for, while in case of contest, these reasons would not be conclusive against the teacher, the board would be estopped from presenting other reasons than those named in the record. *Neville v. School Directors*, 36 Ill., 71. When a teacher is unjustly dismissed, an appeal may be taken from the action of the board in dismissing him, but a suit at law must be brought, if he seeks to recover his pay upon the contract. The teacher can be paid only to the date of legal dismissal.

(e) In the trial of a teacher, when it is sought to dismiss him, all the provisions of section 1734 must be strictly complied with. The board may not prevent the teacher from making a full defense, and the teacher may appear by attorney, or otherwise, as he chooses.

SEC. 1736. It is very important that the secretary should file the certificate with the county officers named, immediately after the regular meetings of the board in March and September; otherwise the funds belonging to the district may be paid to persons not authorized to receive them. Whenever a change is made, the county officers should be notified.

SEC. 1737. These rules should be carefully prepared, and adopted by the board and recorded, and each subdirector should be furnished with a copy. These rules and regulations may properly provide all restrictions not in conflict with law, which the board see fit to adopt for the guidance of subdirectors. They may provide that a subdirector may not teach his own school;

that no contracts shall be made by him which do not expire with the school year; and that he may not engage a near relative as teacher unless he has obtained the previous consent of a majority of the board; nor employ any teacher to whom a majority of the electors or patrons object in writing.

SEC. 1738. (a) As to the proper course to pursue when the board is reduced below a quorum, see note (f) to section 1730.

(b) A change of district boundaries is illegal and void, unless made by a majority of the whole board.

(c) Any compensation paid to any other member of the board than the secretary and treasurer, for the performance of official duties is in direct opposition to the law, and an open violation of the oath of office. For locating sites, or receiving buildings on the completion of contracts, they clearly cannot receive pay.

SEC. 1739. (a) The president of the board should take the oath of office according to article 11, section 5, of the Constitution of Iowa.

(b) The president has the right to vote on all questions coming before the board. If by such vote a tie is produced, the motion is lost. Sections 1721 and 1802, notes.

(c) The president can draw no order on the district treasury except by authority of the board of directors. Section 1733 and notes, also section 1741, notes (e) and (f).

(d) The president should not act as secretary or treasurer of the board. In the absence of the president, or when he refuses to discharge the proper duties of his office, a temporary president may be appointed, who, during the time he is acting as president, may sign orders and contracts, and do all other acts proper to be done by the president, but is not authorized to act, except when the board is in session.

(e) The failure of an officer to attach his official title to his signature, will not effect the instrument so far as the district is concerned; *provided*, the writing was authorized, and made for the district, and this fact can be shown.

(f) An order of the board cannot be considered as officially transmitted, unless signed by the president, as well as by the secretary.

SEC. 1740. (a) The expenses in suits provided for by this section should be paid from the contingent fund.

(b) "Appeals to the county superintendent or superintendent

of public instruction, are not suits brought by or against the district township, and they are not suits brought by or against any of the school officers, within the meaning of the law, and no charge can be made against the district township for attorney's fees. *Templin & Son v. District Township of Fremont*, 36 Iowa, 411.

SECRETARY.

SEC. 1741. (a) It is essential that the record of the proceedings of the board and district meetings should be properly kept. Every transaction should be carefully noted, and the proceedings should be read and approved. The registry of orders is also an important matter. Every order drawn should be promptly reported to the district treasurer, as he has no other means of determining the amount of outstanding orders, otherwise he can not comply with the law requiring him to make partial payments. Sec. 1748.

(b) The secretary is the custodian of the order-book. He makes the orders which the president afterward signs.

(c) Public records are public property, and they are open to inspection at any time by any citizen. No public officer can refuse examination of the records; but he is their custodian, and being charged with their safe keeping, he must keep them in his possession.

(d) The failure of the secretary to record all the proceedings of the board and of district meetings in separate books, kept for that purpose, will not render the proceedings void. *Higgins v. Reed, et al.*, 8 Iowa, 298.

(e) The secretary, president and treasurer must conform to the instructions of the board so far as those instructions are in accordance with law, but they should not obey the board when directed to do an *illegal* act.

(f) If the board appropriate money to pay their members, other than the secretary and treasurer, or for any other illegal purpose, the president and secretary should refuse to sign the order, and, if drawn, the treasurer should refuse to pay it.

(g) The secretary should not act as president or treasurer.

SEC. 1742. See sections 1718 and 1719 and notes.

SEC. 1743. The secretary is also required to keep an account current with the district treasurer, as provided by section 1782.

SEC. 1744. This will aid the county superintendent in planning his work of visitation, provided for in section 1774. The name of the teacher should also be given.

SEC. 1745. (a) The blanks for the annual report of the secretary are furnished by the state, through county superintendents. The secretary should record the report, required by this section, in the district records. If a copy of the report is simply filed in his office, it is liable to be destroyed or mislaid, which may prove detrimental to the interests of the district.

(b) In districts formed of parts of two or more counties, the secretary should make the annual report to the superintendent of the county in which a majority of the children reside. This report should not embrace those children who reside in portions of the district lying in other counties. The remaining number of children should be reported by the secretary to the superintendents of their respective counties.

(c) In independent districts, it is the duty of the secretary of the board to take the annual school enumeration required by the first clause of this section, unless the board assign the duty to another person; in such case proper compensation should be given for the work required.

SEC. 1746. In case the subdirectors fail to make their annual reports, as required by section 1755; the secretary should collect the statistics necessary for a complete report. The board of directors should give the secretary a suitable compensation for his labor. Sec. 1733.

TREASURER.

SEC. 1747. (a) The language of this section is very explicit. It makes the treasurer the custodian of all moneys belonging to the district, which effectually precludes the idea of dividing the money belonging to any particular fund among the subdistricts. He can pay it out only on the order of the president, countersigned by the secretary, and the president can draw no order unless he is authorized to do so by the board of directors. Section 1733, and notes to same; also section 1741, notes (e) and (f).

(b) Neither the electors nor the board of directors can authorize the treasurer to loan money belonging to the district.

(c) "If any state, county, township, school or municipal officer, or officer of any state institution, or other public officer

within the state, charged with the collection, safe-keeping, transfer, or disbursement of public money, fails or refuses to keep in any place of deposit that may be provided by law for keeping such money, until the same is withdrawn therefrom upon warrants issued by the proper officer, or deposits such money in any other place than in such safe, or unlawfully converts to his own use in any way whatever, or use by way of investment in any kind of property, or loan without the authority of law any portion of the public money entrusted to him for collection, safe-keeping, transfer, or disbursement, or converts to his own use any money that may come into his hands by virtue of his office, shall be guilty of embezzlement to the amount of so much of said money as is thus taken, converted, invested, used, loaned, or unaccounted for, and upon conviction thereof he shall be imprisoned in the penitentiary not exceeding five years, and fined in a sum equal to the amount of money embezzled, and, moreover, is forever after disqualified from holding any office under the laws or constitution of this state." Code, section 3908.

SEC. 1748 (a) Minor improvements, such as the erection of ordinary outhouses, fences, etc., may be paid from either the contingent fund or school-house fund. Ordinary repairs should be charged to the contingent fund; but when such repairs assume the magnitude of a re-building, or of an extensive addition, they should be charged to the school-house fund.

(b) The original cost of seating school-houses should be paid from the school-house fund. The law does not authorize the use of the contingent fund for the erection or completion of school-houses, but when a house needs re-seating or other repairs, the cost may be defrayed either from the contingent fund, or from any unappropriated school-house fund in the treasury.

(c) Since the board of directors receive no pay for their services if they subscribe for any journal containing the official rulings and decisions of this department to aid them in their work we think they have a right to pay for the same from the contingent fund.

(d) Boards of directors have no authority to transfer money from one fund to another, even temporarily, unless they are authorized under section 1717½ to transfer from the school-house fund to either of the other funds.

(e) The teachers' fund should not be divided among the sub-

districts, neither equally nor according to the number of children nor upon any other basis. This fund can be paid out only to teachers for services performed, upon orders authorized by the board of directors. The board should limit the compensation to be paid teachers, according to the circumstances and wants of each subdistrict.

SEC. 1749. See section 1784.

SEC. 1750. The register provided for in this section is indispensable to the treasurer, under the law requiring him to make partial payments on orders, when he has not funds sufficient to pay them in full; section 1748. It is essential that he should know the exact amount of outstanding orders, and for this reason the secretary is required to report to him all orders drawn on the district treasury. Section 1741, and note (a),

SEC. 1751. (a) The blanks for the annual report of the treasurer are furnished by the state, through county superintendents. The reports should be made according to form supplied.

(b) The treasurer is responsible for all moneys coming into his hands by virtue of his office, even if stolen or destroyed by fire. The board have no authority to release him, unless he accounts in full for all moneys received by virtue of his office. *District Township of Taylor v. Morton*, 37 Iowa, 550; *District Township of Union v. Smith*, 39 Iowa, 9.

(c) "SEC. 690. When the incumbent of an office is re-elected he shall qualify as above directed; but when the re-elected officer has had public funds or property in his control, under color of his office, his bond shall not be approved until he has produced and fully accounted for such funds and property to the proper person to whom he should account therefor; and the officer or board approving the bond shall indorse upon the bond, before its approval, the fact that the said officer has fully accounted for and produced all funds and property before that time under his control as such officer; and when it is ascertained that the incumbent holds over another term by reason of the non-election of a successor, or for the neglect or refusal of the successor to qualify he shall qualify anew within a time to be fixed by the officer who approves of the bonds of such officers."

SUBDIRECTOR.

SEC. 1752. (a) In case a subdirector elect fails to qualify, the vacancy thus created is filled by his predecessor, who holds

over another year, and should renew his oath of office. As soon as it is ascertained that he holds over, he may be required to qualify within a time to be prescribed by the board. See section 690, Code, also note (a) to section 1730.

(b) Any school director or director elect is authorized to administer to any school director elect the official oath required by law, but the secretary can not administer this oath unless he is a member of the board, a magistrate, or notary public.

(c) If a person is elected as his own successor and fails to qualify by the third Monday in March, a vacancy exists which should be filled by appointment.

SEC. 1753. (a) The subdirector is clothed with certain general powers by this section, but these are to be exercised under the direction of the board. The board may restrict him, for example, as to when he shall employ teachers, for how long a time, at what compensation, and even whom he shall employ; the extent of repairs, and prices paid for same; and the amount and cost of fuel. *Thompson v. Linn*, 35 *Iowa*, 361. See note to section 1737, and preface to these laws.

(b) "When a teacher or other person is about to enter into a contract with a subdirector, he knows that he is dealing with a public agent whose powers are subject to regulations and restriction by the board; he is bound to know what these rules and restrictions are, and should be governed accordingly." *Ib.*

(c) The district township is bound by the contract of a subdirector, when made according to instructions by the board. 35 *Iowa*, 361.

(d) The president can be compelled by *mandamus* to give his approval of a contract made in accordance with a vote of the board.

(e) The board may pass a resolution that teachers shall receive their pay monthly, upon the certificate of the subdirector, or of a committee of the board, that the required time has been taught.

(f) The board should regulate the compensation of teachers in the several subdistricts, authorizing the payment of such wages in each as will enable the subdirectors to secure teachers qualified to teach and govern their respective schools.

(g) Each subdirector has exclusive control of the school-house in his subdistrict, unless the district township meeting has otherwise ordered.

(h) Special powers delegated to the subdirector by the law, as, for instance, the control of the school-house in his own subdistrict (section 1753), and the right to determine whether scholars may attend from or in an adjoining subdistrict (section 1795,) can not be assumed by the board.

(i) It is proper to permit the use of school-houses for the purpose of public worship on Sunday, or for religious services, public lectures on moral or scientific subjects, or meetings on questions of public interest, on the evenings of the week, or at any time when such use will not interfere with the regular progress of the school. *Townsend v. Hagan, et al.*, 35 Iowa, 194.

(j) The subdirector in district townships, or the board in independent districts, should require from parties desiring the use of the school-house, security for its proper use, and its protection from other injury than natural wear.

(k) The use of a public school building for Sabbath-schools, religious meetings, debating clubs, temperance meetings, and the like is proper. Especially is this so, where abundant provision is made for securing damages which the tax-payer may suffer by reason of the use of the house for the purposes named. The use of a school-house for such purpose, when so authorized, is not prohibited by section 3, article 1, of the constitution. See 50 Iowa, 11.

(l) If any person willfully write, make marks, or draw characters on the walls or any other part of any church, college, academy, school-house, court-house or other public building; or willfully injure, or deface the same, or any wall or fence inclosing the same, he shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not more than thirty days." Section 3986, Code.

SEC. 1755. The failure of subdirectors to make their reports, as required by this section, will reduce the semi-annual apportionments for the year, since they are made upon the enumeration of persons of school age.

SEC. 1756. (a) The law does not provide that the board of directors are compelled to give scholar or parents notice or chance for defense before ordering the suspension or expulsion of the scholar. The board have large discretionary powers. This is one of the matters which come wholly within their discretion.

(b) A careful investigation of the charges against the scholar should be made before he is dismissed.

(c) The action of the subdirector and president in dismissing a scholar remains in force for the term only.

(d) The teacher has control over scholars during school hours, within reasonable limits, unless restricted by a rule of the board. He may require a scholar to remain in his seat during recess, as a punishment. However, it is not wise to deprive children, to any great extent, of the exercise necessary to their physical well-being.

TEACHERS.

SEC. 1757. (a) All contracts made by the subdirector, under the provisions of section 1753, must be approved by the president and reported to the board of directors. The teacher's certificate should be produced before the contract is signed.

(b) All matters agreed upon should be incorporated into the written contract. The tendency of our courts is to presume that the written contract embraces the entire agreement of the parties.

(c) Section 2976, Code of 1873, provides that "a municipal or political corporation shall not be garnished." However, the corporation may waive exemption from this process. See *Iowa Reports*, 25, 315.

(d) If a teacher is at the school-house at the proper time, and remains during school hours, he is entitled to pay therefor, according to his contract, whether scholars are present or not.

(e) Without special mention in the teacher's contract, it is understood that only the common branches are expected to be taught.

(f) The board, for what seem to them good reasons, may order a short vacation. But they can not shorten the term included in the contract, without consent of both parties.

(g) It is lawful for a board to give teachers holidays and not deduct pay, and it is quite usual. The teacher, however, can not claim it as a right.

(h) "It is the duty of the subdirector to file the teacher's contract with the president of the board, and secure his approval; the teacher being permitted to enter upon the performance of the contract, has a right to presume the contract was duly approved, and the absence of such approval can not deprive the teacher of

the right to recover the stipulated compensation for the service by him rendered." *Hattie Conner v. District Township of Ludlow*, 35 Iowa, 375.

(i) A contract made by a subdirector who is president, should be submitted to the board for approval. If a subdirector is employed to teach the school in his own subdistrict, he should contract with the board, or with a committee appointed for that purpose, by the board.

(j) The approval of the teacher's contract by the president is a *mandatory* act, which he can not refuse to perform, unless the contract is drawn at variance with instructions from the board, or otherwise violates law.

(k) The board may authorize the president and secretary to draw orders for the payment of teachers' salaries at the end of each school month, upon proper evidence that the service has been performed. See note (e) to section 1753.

SEC. 1758. (a) The only legal certificates, besides those given by county superintendents, are the perpetual State certificates, issued by the educational board of examiners, prior to September, 1873, when said board was abolished. The superintendent of public instruction is not authorized to issue teachers' certificates.

(b) The teacher must have a certificate during the whole term of school, he is not authorized to teach a single day beyond the period named in his certificate. In case of the temporary absence of a teacher, from sickness or other cause, the place should be supplied with some person duly authorized to teach, selected by the subdirector.

(c) In case a person is employed or continued as a teacher in violation of law without a certificate, a resident of the district may sue out a writ of injunction, restraining the person from teaching and the district from paying. Such a writ can not be served at the instance of the county superintendent. *Perkins v. Wolf et al.*, 17 Iowa, 228. Boards of directors employing and paying such teachers are liable to prosecution under the provisions of the general statutes for *misapplication of funds*. See sections 3965, 3966 and 3967, Code.

SEC. 1759. (a) The teacher may be held responsible for the efficient discharge of every duty properly attaching to his office, including the exercise of due diligence in the oversight and pres-

ervation of school buildings, grounds, furniture, apparatus, and other school property, as well as the more prominent work of instruction and government. Making fires and sweeping the school-room are not, properly, a part of the teacher's duties. In rural districts, teachers frequently perform this labor, as a matter of convenience and economy; those who are unwilling to perform this work, or who expect to receive pay for it, should so stipulate with the subdirector before entering into the contract to teach.

(b) The party doing damage to school property is responsible for the same. The teacher is bound to exercise reasonable care to protect and preserve school property, and failing to do so may be held liable for damages sustained.

SEC. 1760. The secretary of the district should refuse to sign an order for the last month of the teacher's wages until the register is filed in his office as required by this section; without this register, he cannot make the report required by section 1745.

GENERAL PROVISIONS.

SEC. 1761. (a) There are no holidays during which teachers are exempt from teaching, unless excused by the board of directors. A legal contract requires twenty days of actual service of a month.

(b) There is no provision of law giving teachers time to visit other schools. Boards of directors may, however, grant holidays for that purpose.

SEC. 1762. The provisions of this section are not applicable to the normal institutes, held in compliance with the provisions of section 1769.

SEC. 1763. A teacher who teaches any of the languages referred to in this section in addition to other work as teacher, must have the certificate required by this section, additional to the one demanded by the first part of section 1766; but a teacher who teaches only one or more of the languages referred to above, or any other special branch named, may be required to have a certificate for such branch as provided by the last part of section 1766, and need not have the other certificate, unless desired.

SEC. 1764. (a) While moral instruction should be given in every school, neither this section nor the spirit of our constitution and laws, will permit a teacher or board of directors to enforce a regulation in regard to religious exercises, which will wound the

conscience of any; and no scholar can be required to conform to any particular mode of worship. Our common schools are maintained at public expense, and the law contemplates that they shall be equally free to persons of every faith. A very suitable devotional exercise consists in reading a portion of Scripture without note or comment, and the repetition of the Lord's Prayer.

(b) The diversion of the school fund in any form or to any extent for the support of sectarian or private schools is inadmissible and clearly in violation of our laws.

“Public money shall not be appropriated, given or loaned by the corporate authorities, supervisors or trustees of any county, township, city or town, or municipal organization of this state, to, or in favor of, any institution, school, association, or object, which is under ecclesiastical or sectarian management or control.” Section 552, Code.

COUNTY SUPERINTENDENT.

SEC. 1766. (a) The examination of teachers is a most important and difficult labor. Examinations should be thorough and systematic, and made with a view of obtaining the actual measure of the proficiency of the applicant in each branch. Written examinations afford the best test of scholarship, if the questions are carefully prepared and frequently renewed.

(b) While the superintendent is not specifically prohibited from examining teachers on other days than the last Saturday in each month, he should generally confine himself to these days, and to such additional time as the amount of labor seems to require. He may, with advantage, make appointments to hold examinations in different localities, for the convenience of teachers, previous to the commencement of the winter and summer schools. Such examinations, with those held at the county seat on the last Saturday of the month, ought, ordinarily, to give sufficient opportunity to all persons desiring to be examined. Applications made at other times should be rejected, unless good reasons are given for not attending the regular examinations; the interests of the schools do not require frequent or individual examinations, and the time of the superintendent can be more profitably employed in the performance of other duties.

SEC. 1767. (a) County superintendents should remember that they are to inquire, not only into the literary qualifications of

the applicant, but they must also be satisfied that the applicant possesses a good moral character, and the essential qualifications for governing and instructing children and youth. *Scholarship, moral character, ability to govern, aptness to teach*—the law requires all four of these qualifications in those to whom are intrusted the highest interests of the state—the education of its youth.

(b) Certificates should not be renewed nor should county superintendents indorse certificates given by other superintendents. Each county superintendent should satisfy himself of the scholastic attainments of his teachers; after he has done this, his visits should always determine, in part at least, the grade of certificate to be granted. Every applicant for an examination, and of course, every person receiving a certificate, should pay a dollar toward the institute fund.

(c) The law fixes only the maximum time for which a certificate may be given. The minimum is left to the discretion of the county superintendent.

(d) It is clearly the intention of the law, that every person who applies for an examination shall pay one dollar. This is to be repeated every time the applicant presents himself for a new examination.

(e) Section 1769 of the Code of 1873, was repealed by chapter 57, of the fifteenth general assembly. Hence, the authority to collect a fee of one dollar as compensation for a private examination, has been abolished.

SEC. 1768. The record required by this section, should be carefully made, as the items form a part of the county superintendent's annual report to the superintendent of public instruction.

SEC. 1769. (a) The normal institute takes the place of the teachers' institute held under previous laws. It must be held at a time when the public schools are generally closed. Preparations for the institute should be commenced early, by securing the requisite instructors, rooms, fixing the time, etc.

(b) The superintendent of public instruction is authorized, upon receipt of the proper certificate from the county superintendent, to appoint the time and place of holding the normal institute and to transmit to him a warrant on the state treasury for fifty dollars, toward defraying its expenses. Section 1584,

Code. County superintendents will determine the time and place, and make application to the superintendent of public instruction for holding an institute, at least thirty days before the institute is to commence. This application and the appointment are necessary to secure the state appropriation.

(c) The length of time during which the normal institutes shall remain in session is left to the discretion of the county superintendent. This will depend largely upon the amount of the institute fund. It cannot remain in session less than one week of six days, section 1584, Code. A session of from three to six weeks may be safely undertaken in most counties.

(d) Attendance upon the normal institute will be voluntary on the part of teachers; but young and inexperienced teachers will not expect to receive certificates, unless of the lowest grade, without regularly attending the normal institute. By means of the larger fund and the greater length of time during which this institute will remain in session, it can, if the proper means are employed, be rendered invaluable to teachers. The benefits which they will receive, will secure their voluntary and general attendance. Any schools that may be in session during the normal institute, will not be closed, except upon the order of the board of directors thereof.

(e) The law requires the county superintendent, *with the concurrence of the superintendent of public instruction*, to procure such assistance as may be necessary to conduct the institute. It is expected that superintendents will select conductors and teachers, as far as practicable, and forward the names for examination and approval. Ordinarily, three or four instructors should be secured, all of whom should be superior teachers of recent experience; one of whom, at least, should have had experience in institute work, and be able to give plain, practical instruction, in methods of school organization, government and teaching. One or more lady teachers should be secured, where it is practicable. The best results are usually secured by dividing the institute into two or more divisions for instruction in the several branches, leaving a portion of the time for general instruction before the whole institute. Poor conductors and instructors have been employed and the teachers of some counties have reason to complain. County superintendents should have sufficient evidence of the abilities of their instructors, before employing them. In all cases when

strangers are employed, references should be required, and inquiries made in this office will frequently secure the proper knowledge.

(f) The superintendent may assume the general management of the institute, and act as conductor, assigning others their work, or may select another, to act as conductor and take the place of teacher, or may simply assume the general oversight and direction. He is entitled to his *per diem* for any service in connection with the institute, as for other official duties, but receives no part of the institute fund.

(g) These normal institutes are short training schools; their object is to reach and correct the greatest defects found in the schools. The superintendent in visiting schools should seek to discover the most prominent defects and wants in the methods of instruction. The normal institute will afford effective means of reaching and correcting these faults. The great object is to instruct teachers *how to teach children*.

(h) The reports and payments to the county treasurer, required by this section, should be made on the first day of each month.

(i) It is the duty of the board of supervisors, at the close of his term of office, to settle with the county superintendent, as with other county officers, according to the provisions of the law.

SEC. 1771. (a) Though an appeal will lie in such cases, the discretion of a county superintendent in refusing or revoking a teacher's certificate will not be interfered with by the superintendent of public instruction, unless it is clearly shown that in such act, the county superintendent violated law or abused his discretion. *Dougherty v. Tracy*, School Law Decisions, 34.

(b) The notice provided for in this section, should contain an explicit statement of the charges against which the teacher is expected to make his defense.

SEC. 1772. (a) The blanks for the annual report of the county superintendent are furnished by the superintendent of public instruction.

(b) The superintendent may test the accuracy of the treasurer's reports by consulting the books of the county treasurer. The amount of the several funds reported as received from the district tax, also the amount received from the semi-annual apportionment, should agree with the county treasurer's receipts for the same. All errors should be corrected. The amounts reported on

hand in the last report should always be reported as the amounts *on hand at last report* the following year.

(c) The abstract of the enumeration of children in each district should be made with especial care, and should be complete and accurate, otherwise the county may not obtain its just proportion of the income of the permanent school fund.

(d) Should the district secretaries or treasurers fail to make their reports in time, the superintendent should take prompt measures to secure them, going after them if necessary.

(e) When district townships are divided, or independent districts organized, the superintendent should immediately file with the county auditor a statement, based upon the last report of the secretaries, showing the number of persons of school age in each of the districts whose boundaries have been thus changed.

SEC. 1774. (a) The superintendent in his visits should seek to aid, instruct, and inspire teachers to the employment of the best methods of teaching, governing, and conducting their schools; should try to secure the proper classification of scholars, the arrangement of courses of study, and the care and protection of the school property. He should study to awaken among parents and children, a deeper interest in the public schools so as to secure improved attendance, deportment and scholarship of scholars, and more frequent visits of parents and school officers. A judicious visit from the superintendent may often serve to infuse new life into the school.

(b) The county superintendent should carefully observe the condition of the school-house and surroundings, note all defects, and notify the subdirector or board of directors of the same.

SEC. 1775. The blanks for these reports are furnished by the superintendent of the respective institutions.

SEC. 1776. (a) The board of supervisors shall furnish the county superintendent with an office at the county seat, together with fuel, lights, blanks, books, and stationery necessary and proper to enable him to discharge the duties of his office, but in no case shall such officer be permitted to occupy an office also occupied by a practicing attorney. See section 3844, Code.

TAXES.

SEC. 1777. (a) This section requires boards of directors to certify the specific sums necessary to be raised for teachers' and

contingent fund to the board of supervisors, whose duty it is to estimate and levy the per centum necessary to raise the amounts so certified.

(b) It is wholly within the discretion of the board of directors to determine the amounts required for the contingent and teachers' funds. Any vote of the electors touching these amounts, is only suggestive, and is not at all binding. All school-house funds must be voted by the electors. See sections 1717 and 1807.

(c) Section 1780 limits the amount which may be levied in a district township for any one year, to fifteen dollars per scholar for teachers' fund and five dollars per scholar for contingent fund, but authorizes the levy of seventy-five dollars for contingent, and two hundred and seventy dollars for teachers' fund for each subdistrict, even if the levy thereby exceeds five and fifteen dollars per scholar, for these funds.

(d) If the amount of school-house tax voted and certified by the board of directors in any year exceeds the limit which the board of supervisors are allowed to levy, under the provisions of section 1780, it is the duty of the board of directors to certify the amount of the deficiency from year to year until the whole amount is levied.

(e) The teachers' and contingent funds are not to be apportioned among the subdistricts, but levied uniformly on the taxable property of the district township.

(f) Chapter 67, laws of 1874, authorizes districts formed from territory lying in adjoining counties, to vote and certify to the respective boards of supervisors the number of mills on the dollar required to raise the necessary school taxes.

SEC. 1778. (a) All *school-house* taxes must be voted either by the district or by the subdistrict electors. When voted they must in all cases be certified to the board of supervisors. All taxes voted by the district township meeting must be apportioned among the subdistricts of the township. The basis of this apportionment is the aggregate number of mills previously levied upon the subdistricts of the township for school-house purposes. The apportionment should be made so as gradually to equalize these rates, in order that the school-house tax may, ultimately, be uniform throughout the district.

(b) The township electors may vote a tax for the erection of

a school-house in any subdistrict, without previous action of the subdistrict electors. If the subdistrict electors vote to raise a sum for school-house purposes, it is the duty of the subdirector to certify the same to the district township meeting. If this duty is neglected the board of directors are not authorized to certify the tax voted. Whatever portion of the sum properly certified the district meeting neglects or refuses to grant, must be certified and levied directly upon the subdistrict making the request, in addition to the equitable portion of the whole amount voted by the district township meeting. If the meeting refuses to vote any amount the whole must be certified and levied upon the subdistrict.

(c) The tendency of the action of the subdistrict electors in voting school-house taxes, is to produce unequal rates of taxation for school-house purposes, and otherwise greatly to complicate the raising of school-house funds; hence, unless the necessities of the case absolutely require, such action should not be encouraged. All necessary school-house taxes should, as a rule, be voted by the district township meeting. See note (c) to Form 3.

SEC. 1779. Personal property should be taxed in the district where the person resides, the general rule being that personal property attaches itself to the residence of the owner. See sections 803-6 and 823-4, Code of 1873.

SEC. 1780. The second proviso in this section was added for the relief of sparsely settled townships, in which five dollars per scholar for contingent fund, and fifteen dollars per scholar for teachers' fund, is not adequate to maintain schools for the time required by law. In such districts these limits may be exceeded, providing not more than \$75 for contingent fund, and \$270 including the semi-annual apportionment, for teachers' fund, is levied for each subdistrict in the township.

COUNTY AUDITOR.

SEC. 1781. For the basis of the apportionment to new districts, see note (v) to section 1772.

SEC. 1783. It is important that the certificate referred to should be promptly forwarded to the superintendent of public instruction; otherwise, the interests of the county may suffer by the transaction of business with persons not duly authorized to act.

The certificate should in all cases certify to the *qualification* as well as the election or appointment of the county superintendent; for, although he may be properly elected or appointed yet he cannot be recognized until it is known that he has taken the necessary oath of office and filed the required bond. Whenever any change is made by resignation or otherwise, a certificate of the appointment and qualification of a successor should be immediately forwarded.

COUNTY TREASURER.

SEC. 1785. The three funds provided for by law, viz.: school-house, teachers', and contingent, must be kept separate by the county treasurer, as provided for in this section, to enable school officers to comply with the law in the discharge of their official duties. See sections 1739, 1741, 1745, 1748 and 1750.

MISCELLANEOUS.

SEC. 1789. (a) The object of this section is to prevent a few designing persons from meeting at an unusual hour, dispatching the business with unseemly haste, and adjourning before many of the electors arrive. The meeting should be conducted with entire fairness, and an opportunity given for an expression of the real sentiment of the district.

(b) In district townships, subdistricts, and in independent districts containing less than three hundred inhabitants, the meeting may be organized at any time after 9 o'clock A. M., and before 6 o'clock P. M., and may continue as long after 12 M. as circumstances may require.

(c) The law contemplates at least three hours for the election, in any case. Iowa Reports, 37, 131; 39, 381.

SEC. 1790. (a) When any election is contested the person elected shall have twenty days in which to qualify, after the date of the decision. See section 687, Code.

(b) The secretary of the board of directors, unless he is a notary public or other civil officer qualified to administer oaths, cannot administer the oath to subdirectors. A subdirector, whether holding over or elected, can administer the oath of qualification.

(c) The decision of a tie vote, as made by chapter 7, laws of the eighteenth general assembly, may make it impossible for

the person chosen to qualify on the third Monday in March. In such case, the board should fix a reasonable time within which the person must qualify. The provisions of section 687, Code, may perhaps apply. See note (a) above.

SEC. 1791. See sections 3908, 3917, 3918, and 3929, Code.

The language of this section includes copies of the school laws, school journals, reports, and all other publications which may be received by virtue of being a school officer.

SEC. 1793. (a) If scholars reside more than one and one-half miles from a school in their own district and nearer to a school in an adjoining district, which they desire to attend, application should first be made to both boards of directors; if the boards refuse to enter into an agreement, they may attend school in such adjoining district with the consent of the board of the district where they desire to attend and of the county superintendent of the county in which the children reside.

(b) The notice referred to in this section cannot be said to be *officially* transmitted unless signed by both the president and secretary of the district. Payment for attendance can be collected from the district where they reside, only from the date of such notice.

(c) Depositing a letter in a post-office without further proof that such letter reached the party addressed, is not a legal notice as required by section 1793 to secure the payment of tuition on the part of an adjoining district.

(d) The average proportion of tuition and contingent expenses for any number of scholars is found by dividing the amount expended for these purposes in the subdistrict where they have attended, by the total attendance in days, and multiplying the quotient by the number of days said scholars have attended. When scholars attend a graded school, the average tuition should be computed on the basis of the expense of each pupil in the grade or room in which such scholars are placed; the average expense of contingent fund may be computed as a part of the whole contingent expense of such school.

(e) If scholars reside nearer to a school in their own district, or within one and one-half miles of one, they can attend school in an adjoining district at the expense of their own district, only by agreement of both boards.

(f) Any other action than compliance with the absolute and

explicit terms of the law will render the collection of tuition impossible.

(g) In no case can scholars attend school in a district in which they do not reside, without the consent of the board thereof. The distance should, in all cases, be computed by the nearest public road.

SEC. 1794. (a) The residence of the *scholar*, and not of the parent, determines his right to attend school. The parent may reside in one district and the child in another. If the parent sends him into another district to remain for a limited period he can attend school only on such terms as may be prescribed by the board of directors.

(b) When there is a question of doubt whether parties are entitled by their residence to school privileges, since the fact of residence depends upon the intention of the parties themselves, their affidavits are the best guide to determine the matter.

SEC. 1795. (a) In order that scholars may attend in an adjoining subdistrict in their own district township, it is necessary to have the consent of both subdirectors. Since this matter is placed in the hands of the subdirectors, the board have no control, and the only remedy is such a redistricting, under section 1796, as will better accomodate all parties.

(b) Special powers delegated to the subdirector by the law, as, for instance, the control of the school-house in his own subdistrict (section 1753) and the right to determine whether scholars may attend from or in an adjoining subdistrict (section 1795) cannot be assumed by the board.

SEC. 1796. (a) While this section provides that boards may change subdistrict boundaries at the regular meeting in September, or at a special meeting called for that purpose between September and March, it must be understood that such change cannot be made so late as to prevent the notices for election from being given at least five days previous to the election, as required by section 1718.

(b) It requires a vote of a majority of *all the members* of the board of directors to make any changes in the boundaries of subdistricts. See section 1738.

(c) It is especially important that the county auditor and treasurer be officially notified by the district secretary whenever any changes are made in the district township boundaries, by

the formation of independent districts or otherwise, to enable these officers to perform their duties in the levy of taxes and the apportionment and disbursement of school funds.

(d) By congressional divisions of land is meant those divisions authorized by congress in government surveys, of which the smallest is, in general, one-sixteenth of a section, or a tract of forty acres in a square form. Government lines, however, sometimes meander along streams and other bodies of water, and divisions of land are thus formed of less than forty acres.

SEC. 1797. (a) This section contains the only provision of law under which a subdistrict can be formed from parts of two or more district townships. The law should be strictly complied with, else the proceedings will be invalid. Subdistricts cannot be formed from portions of two or more counties.

(b) Streams well bridged and distance are not "natural obstacles" in the contemplation of the law.

(c) Such subdistricts can be formed only by concurrent action of the board of directors of the district from which the territory is taken, and the county superintendent. As the county superintendent has original concurrent jurisdiction, no appeal can be taken from the refusal of the board to give consent.

SEC. 1798. (a) This section was changed by chapter 111 of the eighteenth general assembly, to apply also to independent districts.

(b) When the boundaries of districts are changed, the territory transferred carries with it a just proportion of all assets and liabilities of the district from which it is taken.

SEC. 1799. District township boundaries must conform to the boundaries of civil townships under the provisions of section 1713. The boundaries of independent districts are not affected by the change of civil township boundaries.

INDEPENDENT DISTRICTS.

SEC. 1800. (a) The two hundred inhabitants must be contained within the limits of the town or village. Additional territory should be given by the board of directors in forming the new independent district. Usually; territory equivalent to about four government sections will constitute a proper district.

(b) An independent district cannot be formed from a city, town or village situated within an *independent* district, because no dis-

strict township board can establish the boundaries, as provided by sections 1801 and 1805.

(c) When the boundaries of cities or towns are extended, the boundaries of their respective school districts are not correspondingly extended. See Iowa Reports, 46, 425.

SEC. 1801. (a) The contemplated independent district must include all of the city, town or village, and may include as much contiguous territory as the board of directors think proper. It is not limited by subdistrict lines, but may, if necessary, include a part or all of two or more subdistricts. When the boundaries extend beyond the limits of a town or city, they must conform to lines of congressional divisions of land. See note (a) to section 1800.

(b) The board of directors of the district township in which a majority of the voters of the contemplated independent district reside, may establish the boundaries of said district without the concurrence of any other board of directors, even when said territory is taken from two or more civil or district townships in the same or adjoining counties. See section 1805.

(c) The notices of the election to determine the question of a separate organization should state with clearness the boundaries of the proposed district.

(d) The president and secretary of the district township should act as chairman and secretary of this meeting, and as judges of the election; in their absence a chairman and secretary should be chosen by the electors.

(e) "All of the electors residing within the proposed limits must be permitted to vote on the question of separate organization." *Fort Dodge City School District v. District Township of Waukon*, 17 Iowa, 85.

(f) "At the meeting held to determine the question of separate organization of an independent district, the polls must remain open from 9 o'clock A. M. until 4 o'clock P. M." *District Township of Hesper v. Independent District of Burr Oak*, 34 Iowa, 306.

SEC. 1802. (a) The first board of directors of an independent district will enter upon the discharge of official duties as soon as qualified, and organize by electing a president, a secretary and a treasurer; the term of office of the president will expire on the third Monday in March following his election; of the

secretary and treasurer, on the third Monday in September after their election. The secretary should immediately file with the county superintendent, auditor and treasurer, each, a certificate, showing the officers of the board, and their post-office address, and should notify them of all subsequent changes made in the officers of the board. See section 1736.

(b) In all independent districts, the president is chosen by the board from their own number, on the third Monday in March. He has the right to vote on all questions coming before the board. Chapter 113 of the seventeenth general assembly, amended section 1802, depriving the president of the right to vote; but this chapter was repealed by chapter 143 of the eighteenth general assembly, and hence the law is restored to the present reading. See sections 1721 and 1739, note (a).

(c) The secretary and treasurer are elected on the third Monday in September. In districts containing over five hundred inhabitants, they must be chosen outside of the board. In districts containing less, the secretary may or may not be chosen from the board, but the treasurer must be chosen outside of the board. This is the effect of a change made by chapter 143 of the eighteenth general assembly. This law is now in force, and all treasurers of such districts must be chosen hereafter outside of the board. The present treasurers will fill their unexpired term. When chosen outside the board they have no vote.

(d) The last official census will, as a general rule, be sufficiently accurate to determine questions relating to the population; but in cases of doubt, the actual existing facts govern; these facts may be ascertained by any reliable means.

(e) In case the board fail to elect an officer on the day fixed by law, or at an adjourned meeting the day of which was fixed at the time of adjournment, the incumbent holds over and should qualify anew. See section 690, Code, quoted in note (c) to section 1751. If the treasurer continues in office by reason of failure to elect a successor, his bond should be renewed and he should produce and account for the funds in his hands, and the statement of such settlement should be stated on his new bond.

(f) All proceedings connected with the organization of the district should be recorded by the secretary in the records of the district, so that the facts concerning its formation and organiza-

tion may be readily obtained in case the validity of the proceedings should ever be questioned.

SEC. 1804. When a new independent district is organized, as provided by this section, the board of directors have authority to determine and certify all necessary taxes, for school purposes, for that year, including *school-house* taxes.

SEC. 1805. An independent district composed of territory from two counties, belongs, for school purposes, to the county wherein a majority of the scholars reside. A certificate to teach should be issued by the superintendent of the county to which it thus belongs, which certificate is valid for any school in the district.

SEC. 1807. (a) The power to vote school-house taxes belongs exclusively to the electors. The *amount* deemed necessary, and not a certain number of mills on the dollar, should be voted. The sums necessary for the teachers' and contingent funds are determined by the board of directors.

(b) The electors frequently assume powers not granted to them by the law. They have only such powers as are specifically enumerated in the law.

SEC. 1808. (a) All vacancies which have occurred in the board, during the preceding year, should also be filled by election, and the ballot should designate the vacancy to be filled; the persons so elected hold for the residue of the unexpired term; all persons *appointed* to fill vacancies in office hold until the next regular election. See Constitution of Iowa, article 11, section 6; also, section 785, Code.

(b) The members elect enter upon their duties at the time of the regular meeting of the board, on the third Monday in March. For time and manner of choosing the officers of the board, see sections 1721, 1790, 1802, 1806, and notes.

SEC. 1809. (a) The change of boundaries authorized by the provisions of this section may be made at any time of year.

(b) Territory transferred from one district to another carries with it an equitable proportion of the assets and liabilities of the district from which it is taken; the district to which it is transferred becomes responsible for such liabilities.

(c) If the boundary between an independent district and a district township is the line of the civil township, it cannot be changed; but if the independent district includes a portion of a civil township, the remainder of which constitutes a district township, the boundaries can be changed.

(d) Where a change of boundaries between districts is desired, and one of the boards acts favorably to the change, a petition may be presented to the other board to concur in that action, although they formerly may have refused to grant a similar petition. From the action of the board upon this petition, refusing to concur, an appeal may be taken.

(e) No appeal can be taken from the action of board taking the initiatory step, while it requires the concurrence of another board to complete the action. The concurrence or non-concurrence of the second board is the order from which an appeal may be taken. See Decisions.

(f) When an appeal is taken from the proper board, the county superintendent must affirm the action of one board or the other, but cannot himself modify the action of the board acting first.

SEC 1812. (a) The language of the last clause is construed to mean that the said board shall proceed *to call an election* in the independent district for the election of officers, as provided by section 1802.

SEC. 1813. (a) This statement should show the total receipts and expenditures for each fund, followed by an estimate of the amount required for each fund to maintain the schools for the ensuing year. The "detailed and specific statement of the receipts and disbursements of all funds expended," should be sufficiently itemized to show the amount received from each separate source; also, the amount expended for each particular purpose.

(b) This statement is for the information of the electors, but they cannot vote upon the amount of taxes to be levied for contingent and teachers' fund, since these matters are determined by the board. See section 1777.

SEC. 1814. (a) Any district township may organize under the provisions of this section into a single independent district, embracing the whole township. The vote may be ordered at any regular or special meeting of the board and submitted to the electors at any time of the year, but if carried in the affirmative, does not take effect until the second Monday in March following, when the directors are elected.

(b) By adopting the independent district system there will be but six directors in any case, and but three where the township contains less than five hundred inhabitants. At the first

election the whole number is elected, and divided by lot into three classes; after which, one or two directors only will be elected annually.

(c) When independent districts have been formed from the subdistricts of a township, they may also, under the provisions of this section, unite into one independent district. In this case, the petition of one-third of the electors in the township should be presented to the township trustees, whose duty it is to call the meeting to vote on the question of consolidated organization.

(d) The plan of making each civil township an independent district, governed by a board of directors chosen from the township at large, is, in many respects, the best system yet devised. It reduces the number of school officers, provides for gradual changes in the board, secures uniform taxation for the support of schools throughout the township, encourages the establishment of graded schools for advanced scholars, and tends to the selection of teachers according to the qualifications and work required in each particular case.

SEC. 1815. (a) The electors of any civil township which has adopted the independent district organization, may vote upon the question of returning to the district township organization, under the provisions of sections 1815-1820, as amended. This amendment operates as a repeal of these sections as found in the Code of 1873.

(b) A single independent district embracing the whole of the civil township may be formed under the provisions of section 1814; a system possessing many advantages over any other, in simplicity of organization, permanency of officers, uniformity of taxation, and economy of management. See note (d) to section 1814.

SEC. 1816. (a) The petition provided for in this section may be presented to the trustees and the vote ordered at any time of year.

(b) The meeting held to determine the question of district township organization is a township meeting; if the vote is in the affirmative, each and every independent district in the township, except those composed of cities or towns, becomes a subdistrict of the district township.

(c) The township trustees may act as judges of this election; in their absence the electors assembled may choose a chairman

and one or two secretaries to act as judges. The polls should be kept open from 9 A. M. to 4 P. M. See note (f) to section 1801.

SEC. 1817. The board of directors of each independent district will continue to act until the third Monday in March following the election, at which time a full statement of all assets and liabilities of the district should be reported to the board of directors of the district township when organized.

SEC. 1818. For powers and duties of this meeting see sections 1718 and 1719, and notes.

SEC. 1819. (a) Upon the organization of the district township, the secretary should file with the county auditor and treasurer a certified plat of the district and report to the county superintendent, auditor, and treasurer, the name and address of each officer of the board.

(b) The district township meeting should be held on the second Monday in March, for the purpose of voting the necessary school-house taxes, as provided in section 1717.

SEC. 1820. (a) Between the time of the election provided for in section 1816, and the third Monday in March following, the boards of directors of the several independent districts have authority to perform all necessary acts relating to the affairs of their districts, but they cannot incur any indebtedness nor make any contracts, except such as may be necessary to maintain the usual schools of their districts.

(b) The district township receives all the assets and assumes all the liabilities of the several independent districts. In case an independent district has issued bonds or otherwise incurred an indebtedness for the erection of a school-house, the board of directors of the district township have authority to apportion school-house taxes for the payment of such indebtedness from time to time as justice and equity may require.

SEC. 1821. (a) Bonds voted under the provisions of this section may be issued and sold as the necessities of the independent district require, but cannot be made available for the purchase of school-house sites.

(b) Chapter 132, of the eighteenth general assembly provides for the refunding of bonded indebtedness by a two-thirds vote of the board of directors, without a vote of the electors, but the interest upon bonds so issued is limited to seven per cent, and the bonds must run at least five years.

SEC. 1822. The amendment requires the bonds to be attested by the secretary.

SEC. 1824. Interest can be paid on an order only from the date of its presentation, whether the rate is specified in the order or not.

SEC. 1825. (a) Land belonging to the state may be taken for a school-house site, and the county auditor is the proper party to receive notice for the state.

(b) A school-house site of less than one acre may be enlarged to one acre.

(c) If the district cannot establish its claim to the school-house site—owing to the loss of the deed, or for other reason—and the owner refuses to grant the site, the district may avail itself of the provisions of this and the following sections and secure a site not to exceed one acre.

(d) Property encumbered, occupied as a homestead, belonging to minor heirs, or the public domain, may be taken under the provisions of this section.

(e) The acre contemplated in this section we think means exclusive of highway.

SEC. 1826. (a) All sites except in incorporated towns, must be located on a public road, and at least forty rods from any residence the owner whereof objects to its being placed nearer, whether obtained by purchase or under the provisions of these sections.

(b) If the public, with the knowledge of the owner of land, has claimed and continuously exercised the right of using the same for a public highway, for a period equal to that fixed by the statute for the limitation of real actions, a complete right to the highway thereby becomes established against the owner, unless it appears that such use was by favor, leave, or mistake. See 22 Iowa, 457.

(c) "Under the Iowa statute of limitations, ten years' user of a highway by the public, under a claim of right, will bar the owner of the soil." Iowa Reports, 19, 123.

SEC. 1827. (a) If personal service cannot be made, as provided by sections 2601-2610, Code, the notice must be published four consecutive weeks, previous to the appraisement, in a newspaper. See sections 2618-2620, Code.

(b) The appraisers are entitled to two dollars for each day's

service, and ten cents per mile from their residence to the location of the property appraised. See sections 3811-3813, Code.

(c) When the owner of land taken under the provisions of section 1827 is unknown or cannot be found it is not necessary to print the report of appraisement, or to attempt other notice to said owner than the printed notice required by this section. See note (a). It is sufficient for the county superintendent to send a certified copy to the board of directors.

(d) If the school board have deposited with the county treasurer the amount assessed by the appraisers in accordance with the provisions of this section, we think the courts of law would hold that the district had come into possession of the site.

(e) The money deposited with the county treasurer should be held for the benefit of the owner of the fee, and not for the mortgagee. Attorney-general's opinion of August 21, 1878.

(f) Since the receipt of the treasurer for the money deposited with him for the owner of the land may be the only evidence of title, such receipt should have a full description of the property, containing the proviso, for reversion to owner, and should be recorded by the county recorder.

SEC. 1828. (a) No deed or other instrument from the owner is required to authorize the district to occupy the land for school purposes. The proceedings should be recorded in full by the district secretary.

(b) In case land desired for a school site is under mortgage, the district may receive from the owner the lease of a portion not to exceed one acre, to be held by the district as long as used for school purposes, and when no longer so used to revert to the owner, as provided by this section.

SEC. 1829. (a) The right of appeal is limited to persons aggrieved or injuriously affected by the decision or order complained of.

(b) After the expiration of thirty days the county superintendent cannot entertain an appeal.

(c) All the decisions or orders of the board of directors are subject to revision on appeal; when the act complained of is of a *discretionary* character, the action of the board should be *sustained* unless it is clearly shown that the board violated law, abused its discretion, or acted with manifest injustice. *Edwards v. District Township of West Point*, School Law Decisions,

(d) No appeal can be taken from the action of the board taking the initiatory step, while it requires the concurrence of another board to complete the action. The concurrence or non-concurrence of the second board is the order from which an appeal may be taken. See Decisions, pages 30 and 57; also, note (g) to section 1809.

SEC. 1830. An affidavit is a written declaration under oath, made without notice to the adverse party. See section 3689, Code. It must be sworn to before some officer authorized to administer oaths. A county superintendent can have no jurisdiction of an appeal case until such affidavit has been filed. A notice of intention to file an affidavit, a verbal complaint, or a petition, is not sufficient to give the county superintendent jurisdiction in appeal cases.

SEC. 1831. (a) The affidavit should contain, first, a statement of the decision complained of, and its date; second, a statement of the facts showing that the appellant has an interest in the decision and is injuriously affected by it; third, the assignment of errors. See Form No. 14.

(b) This affidavit being the first paper filed, care should be taken that the case is properly entitled, and this title should be preserved throughout the further progress of the appeal. The date of filing should be indorsed upon the affidavit by the superintendent.

SEC. 1832. (a) The notice should describe the decision or order appealed from, so that it may be identified, and should require the district secretary to file the transcript with the superintendent within the time specified. The notice may be served personally or sent by mail.

(b) The secretary shall make and forward a transcript or copy of the record of all actions of the board relating to the decision or order appealed from, also of all petitions, remonstrances, plates and papers pertaining thereto. The *original* papers must be preserved with the district records.

(c) During the pendency of an appeal, all matters must remain in *statu quo*, and this can be enforced by writ of injunction. Also, during such time, no opinion relating to the case will be given to interested parties, by this department. See also note (f) to section 1718.

SEC. 1833. Notice of the time and place of hearing should be

given to the appellant, to the secretary of the board, and to all other persons known to be interested. The notices may be served personally or sent by mail.

SEC. 1834. (a) County superintendents, in entertaining and determining cases appealed from boards of school directors, are not invested with judicial powers. *District Township of Sioux City v. Pratt*, 17 Iowa, 16. While, according to this decision, the superintendent is not a court in the strict sense of the term, he is required to administer oaths, to hear evidence on both sides, and to render a just and equitable decision. And while mere technicalities should not be permitted to prevent the attainment of justice, it is not inappropriate that the superintendent should be governed by the same rules as to evidence and practice, which ordinarily obtain in courts.

(b) In case of disturbance or interruption during the trial of an appeal before a county superintendent, since he is not invested with judicial power, he has only the ordinary remedy of complaint to the proper authorities, as provided for in section 4069, Code.

(c) The docket or minutes of the superintendent should commence by noting the filing of the affidavit of the appellant. He will afterwards, as the acts transpire, record the sending of the notice of appeal to the district secretary, the filing of the transcript, the sending of notices of the hearing, and any adjournment of the case that may be granted. At the trial he will carefully note down the names of all parties appearing, and their post-office address, and whether they appear for or against the appeal; also, the filing of all papers and names of witnesses, and in whose behalf such papers or witnesses are introduced. The decision of the superintendent will form an appropriate close of his minutes. See Forms 14, 15, 16 and 17.

(d) All testimony must be given under oath and the substance reduced to writing at the time by the county superintendent. It is of the first importance that the record of the testimony be full and accurate, as the decision of the county superintendent, also of the superintendent of public instruction, in case the appeal is carried up, must be based upon the record of evidence introduced. This testimony should be preserved with the other papers of the case.

SEC. 1835. (a) Appeals to the superintendent of public instruction are conducted in the same manner and governed by

the same rules, so far as applicable, as appeals to county superintendents. The basis of the appeal must be an affidavit filed in the office of the superintendent of public instruction, within thirty days from the date of the decision appealed from. For form and contents of the affidavit, see notes to sections 1830-1.

Upon the filing of such an affidavit, the superintendent of public instruction will notify the county superintendent to forward a *transcript* of the papers in the case within thirty days. The *original* papers must be preserved on file in the county superintendent's office. Upon the filing of the transcript, thirty days' notice of the time set for hearing will be given to all parties interested. This time may be diminished, on the written agreement of both parties.

(b) At the hearing, parties interested may appear personally or by attorney, and argue their cases orally, if they desire, or they may send written arguments. The records of the case in the county superintendent's office will furnish the data required for these arguments. The records of cases in the offices of county superintendents, which are public records, and should be open as such to examination by all parties interested, will furnish all needed data where access to the transcript sent up is inconvenient. The superintendent of public instruction will not hear original testimony in the cases submitted to him.

(c) Any person aggrieved by an action of the county superintendent in refusing to grant a certificate or in revoking the same, may apply to him for a rehearing; the proceedings to correspond as nearly as possible to the proceedings in the case of an appeal from a board of directors. If any party is aggrieved by the result of this investigation an appeal may be taken therefrom to the superintendent of public instruction. See opinion of the attorney-general, *School Journal* for June, 1867; also, *Dougherty v. Tracy*, School Law Decisions, page 34.

(d) A party in whose favor an appeal is decided has the remedy of a writ of mandamus from a court of law, to enforce the decision of appeal.

SEC. 1836. Payment for postage in advance will be required with the affidavit. It is impossible to tell what amount of postage will be needed in each case, and one dollar will be required, to cover all needed postage. This will undoubtedly re-imburse the state for outlay of postage in appeal cases.

SEC. 1585. Chapter 115 of the laws of the seventeenth general assembly changed the provisions of section 1585, preventing the use of university funds for the support of a preparatory department, heretofore sustained by the university. Students are now required to come prepared to enter upon collegiate studies. For terms of admission to the university, apply to the president of the university, at Iowa City.

CHAPTER 129, LAWS OF 1876.

(As amended by Chapter 142, Laws of 1878.)

STATE NORMAL AND TRAINING SCHOOL.

SECTION 5. This section was amended by Chapter 142, of the seventeenth general assembly, authorizing the board of directors to charge a tuition fee. For terms of admission to the school, apply to the principal of the normal school, at Cedar Falls.

CHAPTER 133, LAWS OF 1878.

(As amended by Chapter 131, Laws of 1880.)

SUBDIVISION OF INDEPENDENT SCHOOL DISTRICTS.

SECTION 1. (a) The provisions of this section as amended apply to all independent districts organized under the laws of this state.

(b) The amount of territory cannot be less than an equivalent of four government sections, unless the provisions of the latter part of this section apply.

(c) An independent district containing territory amounting to less than eight government sections may be divided into two independent districts, if an unbridged stream or other obstacle prevents a considerable number of scholars from attending school, or if one portion contains a village of not less than one hundred inhabitants. The district so formed must contain territory amounting to not less than two government sections, and a majority of the votes cast in each contemplated district must be cast for the division.

SEC. 2. When the required number of electors petition for such division, the board of directors are compelled to call the election.

SEC. 5. When the division has been made, a settlement of assets and liabilities must be made, in conformity with section 1715.

CHAPTER 8, LAWS OF 1880.

SEPARATE POLLING PLACES.

SECTION 1. This chapter applies only to cities which, with their contiguous territory, have not less than 15,000 inhabitants, as determined by the last state or national census.

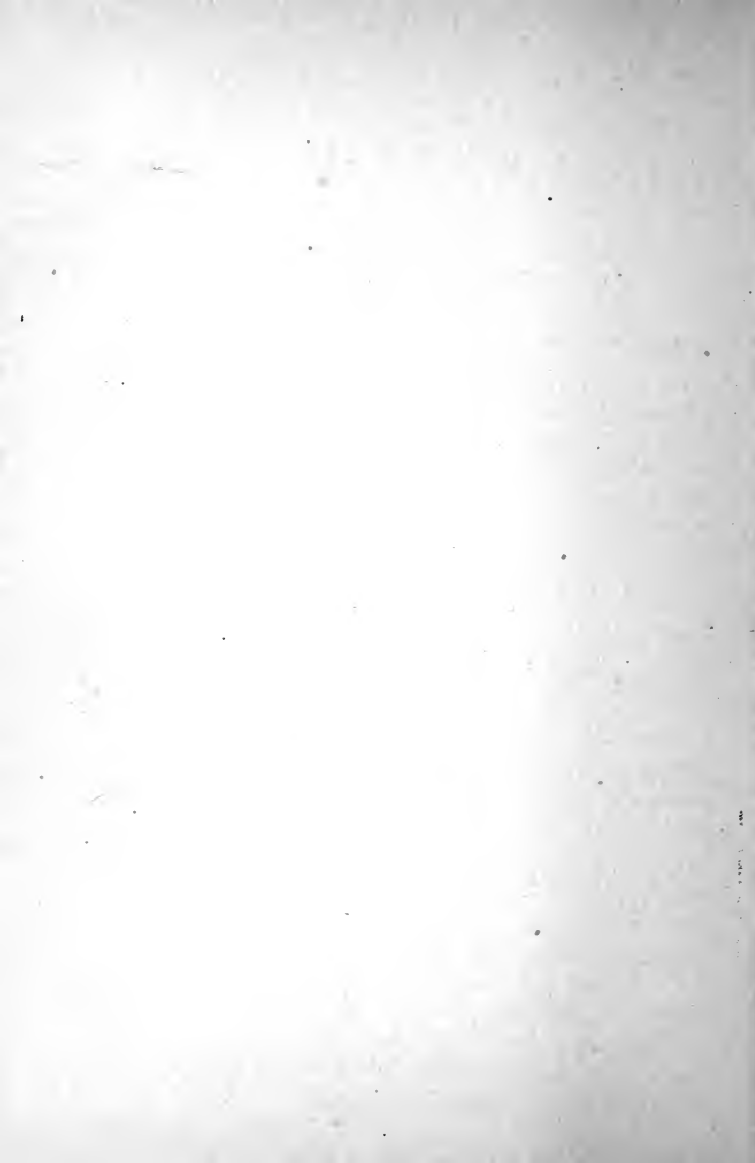
SEC. 2. The directors should submit all questions pertaining to school-house taxes, including those for library and apparatus, in such way that the electors can determine these questions by ballot.

CHAPTER 51, LAWS OF 1880.

This chapter is substantially a re-enactment of chapter 132 of the seventeenth general assembly.

CHAPTER 132, LAWS OF 1880.

SECTION 1. The board of directors can refund outstanding bonds by a two-thirds vote of the board. The bonds must run at least five years, and the interest is limited to seven per cent. They are not required to submit the question of issuing bonds to redeem outstanding bonds, to the electors, as provided in section 1821. if the above conditions are fulfilled.



PART III.

DECISIONS.

SARAH E. SMITH V. DISTRICT TOWNSHIP OF ALBION

Appeal from Howard County.

TEACHERS: *Right of, to inflict punishment upon their pupils.*
A school master who stands in *loco parentis* may, in proper cases, inflict moderate and reasonable chastisement. The law confides to teachers a discretionary power in the infliction of punishment upon their pupils, and will not hold them responsible criminally, unless the punishment be such as to occasion permanent injury to the child, or be inflicted merely to gratify their own evil passions.

The record in this case shows that the plaintiff, Sarah E. Smith, entered into a contract with the subdirector of subdistrict number two in said district township, to teach a school for four months, commencing on the 19th of December, 1864. That she commenced her school accordingly, and taught until the 30th of January, 1865. That on the 29th of January she was notified to meet the board of directors to answer to the charge of undue severity in chastising one of her pupils; that she attended the meeting of the board and made her defense, but the board decided to expel her from her school, paying her for the time she had taught. From this action of the board she appealed to the county superintendent, who reversed the order of the board, and from the decision of the county superintendent an appeal is brought to the superintendent of public instruction.

It is claimed on the part of the board that the county superintendent had no jurisdiction, and that he erred in entertaining the appeal and reversing the order of the board ; but having gone to trial before the county superintendent, and having submitted the case, after making their defense, they cannot now plead want of jurisdiction.

The testimony shows that the pupil, a boy of some twelve years of age, did not like the seat assigned him by the teacher, and asked permission to go out, which was given ; that he started toward home ; that the teacher called to him to come back, threatening to punish him if he disobeyed ; that he went home and remained out of school about a week ; that at the close of the school on the day he returned the teacher reminded him of the punishment threatened, and proceeded to administer it, striking him over the shoulders and back with a whip furnished by one of the pupils ; that the boy resisted, striking back, snatching away the whip, and using bad language ; that the teacher obtained another whip—a willow switch—and administered several strokes with it, some of which were across his head and face, in consequence of which one of the boy's eyes was apparently injured. An older brother of the boy then interfered, and the "affray ended."

It does not appear that the teacher punished hastily or in anger, or that it would have been too severe, or improperly administered, had the boy not resisted. It is doubtful whether the resistance justified the teacher in striking the boy across the head and thereby causing an injury—fortunately temporary—to one of his eyes. The county superintendent regarded this as accidental, and as no permanent injury was sustained, justified the teacher.

Much has been written during the last twenty-five years in regard to the proper means to be used for main-

taining the authority of the teacher over the pupils. We can remember when the whip was applied very frequently and very severely—when the pupil obeyed from fear of punishment, and not from any sense of duty or of respect for authority. Since that time there has been a great change; appeals to reason, to a sense of duty and to right have been successfully used by the most competent teachers. In many schools the rod is excluded, and yet ready and cheerful obedience is secured from the pupils. We wish such a result could be reached in all the schools; that the teacher could inspire the pupils with such a love for order—for good government and for rightful authority; with such a love for right-doing and such a hate for wrong-doing, that it would only be necessary to point out the path of duty instead of the *command* to walk in it. While family government and the public sentiment of some communities may render such a course possible, the want of family government and the loose reins given to “*Young America*,” in many communities require strong and *physical* force to hold in subjection unsubdued nature.

All admit that the teacher must maintain authority, and for that purpose he is sustained by the highest authorities in inflicting moderate punishment.

In Kent’s Commentaries, 9th edition, volume 2, page 222, is the following: “A school-master who stands in *loco parentis*, may in proper cases inflict moderate and reasonable chastisement.”

In Wharton’s American Criminal Law, 5th edition, volume 1, page 669, is the following:

“The law confides to school-masters and teachers a discretionary power in the infliction of punishment upon their pupils, and will not hold them responsible criminally, unless the punishment be such as to occasion permanent injury to the child, or be inflicted merely to gratify their

own evil passions." *State v. Pendergrass*, 2 Dev. & Bat., 407.

"On the trial of an indictment of a school-master for an assault on a pupil the judge refused to instruct the jury that the defendant was criminally liable for punishing a pupil only when he acted *malo animo*, from vindictive feeling, passion, or ill-will, or inflicted more punishment than was necessary to secure obedience, and not for error of opinion or judgment, provided he was governed by an honest purpose to promote discipline and the highest welfare of the school, and the best interests of the child ; and instructed them that in inflicting corporal punishment a teacher must exercise reasonable judgment and discretion, and be governed as to the mode and severity of the punishment by the nature of the offense, the age, size, and apparent powers of endurance of the pupil." *Commonwealth v. Randall*, 4 Gray (Mass.), 36.

"If there is any reasonable doubt that the punishment was excessive the master should have the benefit of it." *Lander v. Seaver*, 32 Vt. (3 Shaw), 114.

We add the following as having some bearing on this case :

"Though a school-master has in general no right to punish a pupil for misconduct committed after the dismissal of a school for the day, and the return of the pupil to his home, yet he may, on the pupil's return to school, punish him for any misbehavior, though committed out of school, which has a direct and immediate tendency to injure the school and to subvert the master's authority." *Lander v. Seaver, supra*.

Many other authorities might be cited establishing the authority of the teacher to inflict punishment necessary for securing obedience to reasonable rules. As it is not shown in this case that the rules were unreasonable or the

punishment severe (the teacher must have the benefit of the doubt in regard to the manner of punishing), the decision of the county superintendent is

AFFIRMED.

ORAN FAVILLE.

Superintendent of Public Instruction.

April 22, 1865.

MARIA L. DOUGHERTY V. L. D. TRACY, COUNTY

SUPERINTENDENT.

Appeal from Grundy County.

1. REVOCATION OF TEACHER'S CERTIFICATE. The order of a county superintendent revoking a certificate will not be interfered with on appeal, unless it appears that he acted from passion or prejudice.

2. ———. Opinions unsupported by facts cannot be received as satisfactory evidence of prejudice.

April 1, 1867. L. D. Tracy, superintendent of common schools for the county of Grundy, revoked the certificate of Maria L. Dougherty, a teacher of said county, on the alleged ground of incompetency to properly govern and control a school. A notice of the revocation, made out in due form, was served upon the secretaries of the several district townships; but no notice of the revocation was served by the superintendent on the plaintiff.

The plaintiff appealed to the superintendent of public instruction, who by circular of May 15, 1867, directed that the case should be heard by the county superintendent. Such hearing took place June 7, 1867. During the examination twenty-three persons, patrons and pupils, testified to the good order of the school, and the general good character and reputation of the plaintiff as a teacher. Fourteen persons made affidavit that they believed plaintiff's certificate was revoked from *personal prejudice*.

One witness, called by the defense, testified that the school was not governed as well as it might have been; that he several times heard cursing and swearing on the school grounds at noon and recess. Three persons testified that they did not believe the superintendent revoked plaintiff's certificate from prejudice or passion. Nineteen persons certified that they believed Mr. Tracy to be a competent and impartial officer, and free from any malicious administration.

The county superintendent, disregarding the weight of evidence in regard to the plaintiff's qualifications, affirmed his previous decision revoking plaintiff's certificate, and certified that the act was done without prejudice or passion toward the plaintiff, and that he was impelled to that course by conviction, which was the result of personal observation and knowledge, that plaintiff was incompetent to govern a school properly.

From that decision the plaintiff appeals.

If this case could be determined by the weight of evidence in regard to the plaintiff's ability to govern a school properly the decision would be in plaintiff's favor. But there are other elements for consideration. The county superintendent is clothed with large discretionary powers. So great has this discretion been regarded that it has been held by previous incumbents of the office of superintendent of public instruction that the refusal to grant a teacher's certificate or the revocation of such certificate by a county superintendent was an act so wholly discretionary that it was not subject to revision. The circular of May 15, 1867, from this department, maintaining the right of appeal in such cases was not intended to curtail the discretionary power of county superintendents, but to point out a way in which its *abuse* might be corrected.

In the absence of special statutory provisions in regard to the manner of hearing appeals, it is presumed that general principles are applicable.

It may not be amiss at this time to enunciate some general principles which will be observed in the adjudication of this and similar cases.

I. The discretion of a county superintendent in refusing or revoking a teacher's certificate will not be interfered with by the superintendent of public instruction unless it is clearly shown that the county superintendent in such act violated the law in letter or spirit, or was influenced by passion or prejudice. This position is believed to be correct in the light of both principle and public policy. The general rule is, "the supreme court will not interfere with the decisions of the district court in cases where the latter has a discretionary power, unless it is fully apparent that such power has been abused." Hammond's Iowa Digest, page 65. Numerous cases might be cited in support of this rule, but such citations are deemed unnecessary. The county superintendent is presumed to be selected from among his fellow citizens on account of his ability to exercise a sound discretion in the discharge of the important duties of his office. He is bound by a solemn oath to discharge his trusts with fidelity. He is on the ground and has a personal knowledge of the circumstances. He can judge of the educational requirements of his county better than another person scores of miles distant. In his examination of teachers and in his visits to their schools he can judge of the teacher's comparative and actual merit and ability better than those who have less extended opportunities for observation. He is responsible to his constituents for the manner in which his duties are performed. His official acts may be reviewed and modified or annulled by

the superintendent of public instruction. Frequent interference with the discretion of county superintendents would tend to bring their authority into contempt, and to unsettle the foundations of our school system. While, then, the right to review an *abuse* of discretion is reserved, and the right to reverse an illegal decision maintained, the discretion of county superintendents will not be interfered with unless such interference is necessary to secure justice or vindicate law.

II. The proof of the violation of law, or of the influence of passion or prejudice in the performance of official duty must be clear and convincing. Mere *opinion*, unsupported by facts, is insufficient to establish the allegation of passion or prejudice. "As a general rule witnesses, unless experts, should state *facts* not *opinions*." *Whitmore v. Bowman*, 4 G. Greene, Iowa, 148. "Except when given by experts, evidence of mere opinion is not competent, unless upon some controlling ground of necessity, resulting from the nature of the inquiry." *Dalzell v. City of Davenport*, 12 Iowa, 437; *Danforth, Dennis & Co. v. Carter & May*, 4 Iowa, 230.

In the light of these principles, which are believed to be correct and proper, conclusions may be readily formed.

It is held that it is not necessary for the county superintendent to notify the plaintiff of his *intention* to revoke her certificate before taking such action; neither does the law require him to serve a copy of the revocation upon the plaintiff, subsequently. Courtesy and propriety, however, would dictate that the teacher should receive immediate notice of the revocation from the county superintendent.

The rulings of the county superintendent on the admission of evidence have no material effect on the final decision of the case, hence the exceptions of the plain

tiff thereto are passed over. The revocation of a teacher's certificate is adjudged to be an act of discretion on the part of the county superintendent, which will not be interfered with, without satisfactory proof of illegality or of prejudice.

In this case, while the weight of testimony is favorable to plaintiff's qualification, and *opinion* is conflicting in regard to prejudice, there is not a single *fact* adduced in the testimony upon which the theory of prejudice can be based. On the other hand, the county superintendent headed a subscription to pay plaintiff's board, and was the first to pay said subscription. During the term he told the subdirector that the plaintiff must be sustained in her government of the school at all hazards; and these facts indicate the absence of prejudice. The mere opinion of witnesses, unsupported by facts, cannot be received as satisfactory evidence of prejudice.

Some embarrassment is experienced in this case from the circumstance that the plaintiff belongs to that gentler sex to which we are all educated to do homage, and the idea is largely prevalent that they are not amenable to law in an equal degree with the opposite sex; but having a high regard for the rights of women, we dare not pervert law even to shield them from its operation. We are therefore compelled to affirm the decision of the county superintendent.

AFFIRMED.

D. FRANKLIN WELLS,

Superintendent of Public Instruction.

October 1, 1867.

BENJAMIN SMITH V. DISTRICT TOWNSHIP OF COFFIN'S
GROVE.

Appeal from Delaware County.

1. PROCEEDINGS. In the absence of proof to the contrary, the legal presumption is that the proceedings before the county superintendent were entirely regular.

2. EXPLANATORY NOTES: *Force of.* Notes to the school law, while proper aids to school officers, have not the binding force of law, and a non-compliance with them is not necessarily a violation of law.

On the petition of the electors of subdistrict number one, Coffin's Grove district township, the board of directors thereof located the site of a proposed new school-house "just east of the burying ground, on the right hand side of the road, adjoining the corner of Mr. Brook's field." From this action plaintiff appealed to the county superintendent on the 25th of March, by whom the case was heard April 19, 1867. On the 13th of June the county superintendent issued an order re-locating the site three-fourths of a mile further south, and at or near the center of the subdistrict. From this order an appeal is taken, and thus the case comes up for review.

The appellants claim a reversal of the county superintendent's decision on the ground:

1 That the county superintendent had no jurisdiction in the matter.

2. That the county superintendent erred in not taking the depositions of witnesses in writing and having the same signed and sworn to by the witnesses.

3. That the county superintendent erred in not making up his record at the time of trial.

4. On the merits of the case.

The denial of the county superintendent's jurisdiction is based on the fact that the original affidavit does not

state that the appeal was taken within thirty days of the action of the board complained of, and reference is made to page 57 of "explanatory notes," in which it is stated that this fact should appear, though there is no such specific requirement in "An act to provide for appeals." The question naturally arises as to the legal force of these "explanatory notes." Have they the effect of statutory provisions, or otherwise? While the right of every tribunal to establish rules and regulations not inconsistent with law, must be admitted, these "explanatory notes" made by the superintendent of public instruction are not legal enactments, nor "rules and regulations," and so far from being *mandatory* in their character are merely advisory and directory, and intended for the assistance and guidance of school officers. They are a commentary on the school law; and as they are replete with good common sense suggestions, their observance will render the administration of the school law more accurate and satisfactory, but a non-compliance with them is not necessarily a violation of law.

It must be admitted that an affidavit which does not state the date of the decision or act complained of is very carelessly drawn and a superintendent might be justified in refusing to entertain it; but if it be entertained, it is still competent for the opposite party to show that the thirty days allowed by law had expired previous to the filing of the affidavit, and thus secure the dismissal of the case. The law gives the superintendent jurisdiction within thirty days, and the state superintendent could not by any rule or regulation annul the statutory provisions. It is not even claimed by appellants that the time for taking appeal had expired, and the date of petitions submitted to the board indicate that it had not expired. In the absence of proof to the contrary, the

legal presumption is that the proceedings before the county superintendent were entirely regular, and therefore the jurisdiction of the superintendent must be sustained.

The second and third errors assigned by appellants are also based on "explanatory notes" instead of upon the law, and cannot be sustained for reasons previously given. While there were things in the management of this case from which we must withhold our commendation, as there seems to have been a substantial compliance with the law, we do not feel justified in dismissing it without an examination of its merits.

The county superintendent gave due notice of the hearing in writing to all the electors of the subdistrict. On the day of hearing several persons appeared, but no "evidence on either side was offered," except the original affidavit of Benjamin Smith. The record of the county superintendent goes on to say: "But to satisfy myself in regard to the number of inhabitants that would be accommodated best by the site remaining where it is at present located by said board," Nelson Bly, James McBride, and Henry Baker were sworn. "Nelson Bly stated that about thirty families lived in said subdistrict, and that only about one-third would be accommodated by the site remaining where it is at present located by said board. James McBride corroborated the statements made by Nelson Bly." After Henry Baker was sworn "so much confusion and controversy arose" that it was found "almost impossible to preserve order," and the superintendent "proceeded to view the different sites."

Among the papers sent up by the district secretary were two petitions to the board, one signed by fifteen persons asking that the site should be located "at or near the corner of Mr. Brook's field;" the other signed by

twenty-three persons, asking that the site be "established as near as practicable in the center of the subdistrict."

In view of the facts before us we cannot do otherwise than sustain the county superintendent, whose decision is

AFFIRMED.

D. FRANKLIN WELLS,

Superintendent of Public Instruction.

December 16, 1867.

JOSEPH F. EDWARDS *et al* V. DISTRICT TOWNSHIP OF WEST POINT.

Appeal from Lee County.

1. APPEAL. The right of appeal is not limited to cases of personal grievances.

2. DISCRETIONARY ACTS. The county superintendent having only appellate jurisdiction, should not reverse discretionary acts of the board, without explicit and clearly stated proof of the abuse of such discretion, even though not fully approving their action.

3. SUBDISTRICT BOUNDARIES: *Change of.* The acts of a board of directors changing subdistrict boundaries and locating school-houses are so far discretionary that they should be affirmed on appeal, unless it is shown that there has been an abuse of discretion.

September 16, 1867, the board of directors of the district township of West Point, Lee county, transferred one-hundred and twenty acres of land belonging to one Timothy Allen, from subdistrict number one to subdistrict number three, in the same district township. From this alteration of subdistrict boundaries, Joseph F. Edwards *et al.* appealed to the county superintendent, by whom the order of the board of directors was reversed. From this decision of the county superintendent, Timothy Allen appeals to the superintendent of public instruction.

It is not claimed that the board of directors exceeded their powers in changing boundary lines, or in any re-

spect violated law. While equality among the several subdistricts, in area, population, and taxable property, is in some respects desirable, it is not required by law, and in fact is impracticable. The claim in the argument of appellees that the action of the board was necessarily wrong, because it had the effect to increase the inequality in some or all of these respects, is not well founded. It is an element which should receive proper consideration, but it will not always exercise a controlling influence.

Mr. Nourse, in his argument for appellant, claims that "no right of appeal existed in the plaintiffs who took the case to the county superintendent;" hence the county superintendent was without jurisdiction. He claims that to entitle a person to the right of appeal the grievance must be of a *personal* character—one that affects the rights or interests of the individual as distinguished from the public. In support of this view he refers to the following decisions by our supreme court: *Humphrey v. Ball*, 4 G. Greene, 204; *Myer v. Sims*, 4 Iowa, 500; *McCune v. Swafford*, 5 Iowa, 552; *Lipencott v. Allan'er*, 23 Iowa, 536. In all of these cases it is held that there is no appeal from the county court or the board of supervisors, unless the grievance is of a personal or individual character as distinguished from the public; and hence by analogy it is claimed that there is no appeal from the board of school directors unless the grievance is of a like character. If the right of appeal in the two cases was derived from the same statute, the decisions cited above would be conclusive. But these decisions are based upon section 267, Revision of 1860, in which the right of appeal is limited to "any matter affecting the rights or interests of individuals as distinguished from the public," etc.; while appeals to county superintendents are based on section 2133, Revision 1860, which provides that, "any person ag-

grieved by any decision or order of the district board of directors in matter of law or fact," may appeal, etc.

As section 2133 does not limit the right of appeal in cases of personal grievance, the decisions cited have no application in the case under consideration.

The important point upon which the issue in this case must turn remains to be stated. The meeting at which the change of subdistrict boundaries was made was attended by six of the eight members of the board, and after a full discussion of the proposed change and an examination of plats of the district, the change was made by unanimous vote, and subsequently approved by one of the absent members. The remaining subdirector, who resides in the subdistrict from which the territory was taken, opposes the change. It is not claimed that the law was violated in the change, but only that the educational interests of the district were impaired.

The question is not so much one of law as of sound judgment and discretion. The change was approved by seven of the eight members of the board, who reside in different parts of the township, six of whom at least, are absolutely without personal interest in the matter. It is opposed by one whose pecuniary interests are contingently adversely affected. The county superintendent opposes his judgment to the judgment of the board. What, in such a case, is the duty of the ultimate tribunal?

The superintendent of public instruction has, as in duty bound, an earnest desire to sustain the acts and decisions of county superintendents. The legal presumption is always in favor of the correctness of official acts and decisions. While the state superintendent applies this principle to county superintendents, it is equally incumbent upon them to apply it to the decisions or orders of district boards of directors. It not unfrequently hap-

pens that county superintendents decide appeal cases upon their own judgment and discretion as if they had original, instead of appellate jurisdiction; and fail to give that consideration to the discretion of district boards, which the above principle requires.

The law prescribing the duties of boards of directors is, in some respects, *mandatory*, requiring that certain specified duties shall be performed in a particular manner. In other cases, the board acts as a local legislature, and its action is *discretionary*. Among these discretionary powers, though not including all of them, are the establishment and change of subdistrict boundaries and the location of school-houses. It has been doubted by some whether an appeal to the county superintendent, from acts of the board wholly discretionary, would lie. While the right of appeal in such cases is maintained, the real character should not be lost sight of; and the action of the board within the limits of the law should not be reversed unless it is evident that it acted with passion, prejudice, or manifest injustice. It is a general principle in law that the exercise of discretionary power will not be interfered with unless it is fully apparent that such power has been *abused*. For further remarks on discretionary power and the manner of proving its abuse, reference is made to the case of *Dougherty v. Tracy, county superintendent*.

In changing subdistrict boundaries, and locating school-houses, the law gives the board of directors original jurisdiction, and as it is discretionary power the action of the board should be affirmed on appeal, unless it is fully apparent by the evidence that the board violated law or *abused its discretion*. If there is a reasonable doubt the board is entitled to its benefit. The action of the board may not be wholly approved by the judgment of the

county superintendent, but if it be not illegal or clearly unjust it should be sustained. When, however, county superintendents feel called upon to reverse decisions of school boards, they should give a clear and explicit statement of their reasons for so doing, that the superintendent of public instruction may be the better enabled to judge of the soundness of their conclusions.

These general remarks have been made with a view to guide county superintendents in their decisions, as well as to indicate some of the principles which will be observed by the superintendent of public instruction in the adjudication of similar cases.

In the particular case under consideration, the board of directors, with unusual unanimity, performed a discretionary act. It is not claimed that this act was illegal or the board was influenced by improper motives. It is not satisfactorily proven that the act was unjust. In our opinion, the evidence does not sustain the county superintendent, in annulling the order of the board, and his decision is therefore.

REVERSED.

D. FRANKLIN WELLS,

Superintendent of Public Instruction.

February 15, 1868.

ELIAS SIPPLE V. DISTRICT TOWNSHIP OF LESTER.

Appeal from Black Hawk County.

1. SUBDISTRICT BOUNDARIES: *Change of.* At the hearing of an appeal before the county superintendent it is competent for him, upon his own motion, to call additional witnesses to give testimony.

2. EVIDENCE: *Parol.* Cannot be received in the absence of allegations of fraud, to contradict or impeach the validity of school district records.

3. RECORD. The board of directors may at any time amend

the record of the district, when necessary to correct mistakes or supply omissions. And may, upon proper showing, be compelled, by *mandamus*, to make such corrections.

At the regular meeting of the board of directors of the district township of Lester, held September 16, 1867, which was attended by four of the seven members of the board, motions were made and seconded for the creation of two new subdistricts whose boundaries were described in the motions. In regard to the action on these motions, the record of the secretary contains merely the word "carried." At a special meeting of the board, held February 15, 1868, the action of the board in September in relation to the formation of new subdistricts was "reconsidered" and "rescinded." From the February action Elias Sipple appealed to the county superintendent. During the progress of the hearing, which took place March 20, 1868, the county superintendent called upon one of the four members of the board that attended the September meeting, who testified that he did not vote for the motion to create a new subdistrict. As it thus appeared that the new subdistricts were not established by a vote of a majority of all the members of the board, as required by law; and as said September action was rescinded at a full meeting of the board in February, the county superintendent, considering the formation of the subdistricts illegal and void, dismissed the appeal. From this decision Barney Wheeler appeals to the superintendent of public instruction.

Appellant alleges substantially that the county superintendent erred as follows:

1. In himself calling a witness to give testimony.
2. In receiving testimony to impeach the district record, which is claimed to be valid and binding after thirty days.

3. In dismissing the appeal.

4. In not establishing the subdistricts.

The law requires the county superintendent to give a "just and equitable" decision, and as the calling of additional witnesses may sometimes enable him to discharge this duty more faithfully, his action in this respect is sustained.

The second error assigned really includes two distinct points, which will be considered separately; and first, in regard to the impeachment of the district record. The law provides for an annual meeting of the electors of the district township, and for semi-annual and special meetings of the board of directors; also that "the secretary shall record all the proceedings of the board and district meetings in separate books kept for that purpose." It is a general principle of law that "oral evidence cannot be substituted for any instrument which the law requires to be in writing, such as records, public documents," etc. 1 Greenleaf's Evidence, § 86. "It is a well settled rule that, where the law requires the evidence of a transaction to be in writing, oral evidence cannot be substituted for that, so long as the writing exists and can be produced; and this rule applies as well to the transactions of public bodies and officers as to those of individuals." *The people v. Zeyst*, 23 N.Y., 142. In the case of *Taylor v. Henry*, 2 Pick., 397, the supreme court of Massachusetts held that an omission in the records of a town meeting could not be supplied by parol evidence. Chief Justice Shaw, in discussing the case, said that it would be "dangerous to admit such a proof." Mr. Starkie, in his valuable treatise on Evidence, says: "Where written instruments are appointed either by the immediate authority of the law or by the compact of the parties, to be the permanent repositories and testimony of truth, it is a matter both

of principle and of policy to exclude any inferior evidence from being used either as a substitute for such instruments or to contradict or alter them ; of principle, because such instruments are, in their own nature and origin, entitled to a much higher degree of credit than that which appertains to parol evidence ; of policy, because it would be attended with great mischief and inconvenience, if those instruments upon which men's rights depend were liable to be impeached and controverted by loose collateral evidence." Starkie, part IV, page 995, volume III, 3d Am. Ed.

The reason of the rule upon which the courts agree with such entire unanimity applies with force in the case now under consideration. The records of the district and board meetings contain a statement of the regulations adopted, and the acts done in the exercise of the powers with which the respective bodies are invested by the law. They present to all the citizens of the district township, in a permanent form, certain and definite information which could be obtained, with equal certainty, in no other way. Memory is defective, but the secretary records the transactions as they occur. The actors change from year to year, but the record is permanent. And though the admission of oral testimony to alter a record or to supply an omission therein might sometimes promote the attainment of justice, the prevalence of such a practice would result in more evil than good. It is held, therefore, that in the absence of alleged fraud the county superintendent errs in admitting parol evidence to contradict or impeach the record of the September meeting of the board of directors.

In regard to the other part of the second point a few words will suffice. The counsel for appellant urges that though the record of the September meeting was imper-

fect, the lapse of thirty days made the record valid and binding upon the district. It is true that the right to take an appeal to the county superintendent expires after thirty days; but I am unable to see how the lapse of time will validate what was before invalid. The secretary is the proper custodian of the records of the school district, and before the record of the proceedings of the board of directors has been approved or adopted by the board the secretary may amend them by supplying omissions, or otherwise correcting them. After they have been approved they may be amended and corrected by direction of the board, even after the lapse of thirty days. In Massachusetts a town clerk is permitted to amend the record in order to supply defects, even after a suit involving a question respecting them has been commenced. I am of the opinion that if the secretary or board of directors decline to make necessary corrections in the record, that a party interested may proceed by *mandamus* to compel the correction. If the record is to be impeached it must be, in the absence of fraud, by a direct proceeding instituted for that purpose, and not by a collateral or indirect method. *The People v. Zeyst*, 23 N. Y., 147-8.

The district record in this case is not as full as it might with propriety be. The law provides that the boundaries of subdistricts shall not be changed except by the vote of a majority of the members of the board. The record fails to show that this requirement of the law was complied with at the September meeting. The secretary says the motion to redistrict "carried." This is his *opinion*, but he fails to give the fact upon which it is based. Four of the seven members were present, but he does not say who, or how many voted for the change. Properly this should have been stated. When, however, the dis-

trict record declares that a motion was "carried," the law will presume that it was carried in accordance with the requirements of the statute; though there is reason to believe that the presumption in this instance is a violent one. It follows that there was no *legal* evidence that the subdistricts were not established in accordance with law; hence, the conclusion is inevitable that the county superintendent erred in dismissing the appeal for the cause assigned.

At the commencement of the trial and again during its progress, the defendant moved the county superintendent to dismiss the case on account of the insufficiency of the affidavit. The affidavit of Mr. Sipple is not as full as it is usual to make affidavits in such cases, yet it "set forth the errors complained of" with such plainness and conciseness as enabled the county superintendent to obtain the necessary transcripts, and this is all that the law really requires. Rev. 1860, §2135. It has not been customary heretofore to enforce any particular form of affidavit, and the county superintendent's ruling refusing to dismiss on defendant's motion is sustained.

As the testimony appears not to have been all in when the case was dismissed by the county superintendent, no opinion can be given in regard to the propriety or necessity of establishing the proposed new subdistricts.

The case is, therefore, returned to the county superintendent, who will proceed with the hearing, first allowing a reasonable time for the correction of the district record or for the enforcement of its correction, should such correction be deemed necessary by either of the interested parties. Should the district record be amended so as to show conclusively that the said subdistricts were not legally formed at the said meeting in September, it will follow that the said subdistricts never had a legal exist-

ence, and that the plaintiff could not be aggrieved by the action of the February meeting, hence the county superintendent will determine the case in favor of the appellee. Should said record not be amended, or should it be amended so as to show clearly that said subdistricts were established in all respects in conformity with law, the question of establishing the new subdistricts, or more properly retaining their organization, will be determined upon its merits.

REVERSED.

D. FRANKLIN WELLS,

Superintendent of Public Instruction.

July 23, 1868.

SYLVESTER GULLET V. DISTRICT TOWNSHIP OF HILTON.

Appeal from Iowa County.

CONTRACTS. The terms of a contract may be changed by agreement of the contracting parties. If either party seeks to evade or change its terms, without the consent and to the prejudice of the other, the remedy is a suit at law.

At a meeting of the board of directors held November 7, 1872, a resolution was adopted, fixing the rates to be paid to teachers upon contracts made by the subdirectors for the winter term, at thirty dollars per month for teachers holding first-class certificates, and at twenty-eight dollars per month for teachers holding second-class certificates. It appears that under this order several of the subdirectors entered into contracts with teachers. At a meeting of the board held December 28, 1872, they rescinded their former action, and adopted an order making thirty dollars and thirty-five dollars the respective rates to be paid; from this order appeal was taken to the county superintendent, who affirmed the action of the

board, and Sylvester Gullet appeals to the superintendent of public instruction.

There is no allegation of prejudice or fraud nor does it appear from the transcript that the board were influenced by any improper motive; the only questions presented are:

First, Had the board authority to adopt a resolution changing the terms of contracts already made?

If so, *Second*, Did they, in fixing the rates adopted at the meeting last held, exceed their authority, abuse their discretionary power, or act with manifest injustice?

As regards the first question, the board have, through the subdirector, exclusive jurisdiction in contracting with teachers and determining the prices to be paid; the original contracting parties have an undoubted right to change the terms of a contract by mutual agreement. If either party seeks to evade or change its terms, without the consent and to the prejudice of the other, the remedy is a suit at law. In fixing the rates to be paid at thirty dollars and thirty-five dollars, it is believed that the board in no manner exceeded their authority, abused their discretionary power, or acted with injustice. The decision of the county superintendent is therefore

AFFIRMED.

ALONZO ABERNETHY,

Superintendent of Public Instruction.

May 21, 1873.

J. D. CALDWELL V. STEPHEN PEEBLES, COUNTY SUPERINTENDENT.

Appeal from Mills County.

1. REVOCATION OF TEACHER'S CERTIFICATE. A teacher's certificate can be legally revoked only upon proof of charges of which he has had personal notice, and against which he has had the opportunity to make his defense.

2. ———. A person addicted to the use of intoxicating liquors who even occasionally becomes intoxicated is not likely to promote correct moral teaching in the public schools by his example, nor to possess such moral character as to entitle him to a teacher's certificate.

Complaint having been made to the county superintendent that J. D. Caldwell, a teacher, was addicted to the use of intoxicating liquors, an examination of the charges was made May 10, 1873, as provided by law, the result of which was the revocation of Mr. Caldwell's certificate. Mr. Caldwell appeals to the superintendent of public instruction.

We need not comment upon the testimony in the trial, since the county superintendent admits that the specifications contained in the complaint were not sustained. Facts, however, were developed incidentally, in the examination of witnesses, apart from the direct issues involved, to satisfy the county superintendent that the defendant does not possess a good moral character, and we are not sure but his conclusions are properly deducible from the evidence.

The law, however, providing for the revocation of certificates, requires that it shall only be "after an investigation of facts in the case, of which investigation the teacher shall have personal notice, and he shall be permitted to be present and make his defense."

In this instance, certain charges were preferred in an information, of which the teacher had due notice, and, as it appears, successfully defended himself against, the charges made, and there rested his case.

It is, perhaps doubtful if the superintendent has the authority to revoke a certificate upon evidence incidentally developed in the trial, however damaging in its nature, the substance of which was not contained in the

original notice, and against which no defense was attempted.

We fully agree with the superintendent that a person addicted to the use of intoxicating liquors, who even occasionally becomes intoxicated, and who is in the habit of visiting disreputable beer saloons, does not possess that degree of moral character to entitle him to a teacher's certificate under our statute. We cannot too highly commend the efforts of county superintendents to promote correct moral teaching in the public schools through the example of the teacher.

Disqualifications of this nature should be fully proven, and in the manner prescribed by law; and we reluctantly set aside this decision, believing that the superintendent was actuated by worthy motives, and did the act solely with a view to promote the good of the schools, and in the conscientious discharge of a public duty.

REVERSED.

ALONZO ABERNETHY,

Superintendent of Public Instruction.

May 31, 1873.

SANFORD HARWOOD V. INDEPENDENT DISTRICT OF
CHARLES CITY.

Appeal from Floyd County.

1. PUNISHMENT; *Right to inflict upon pupils.* The right of the parent to restrain and coerce obedience in children applies equally to the teacher, or to any one who acts *in loco parentis*.

2. RULES AND REGULATIONS. Boards of directors and their agents, the teachers, may establish reasonable rules for the government of schools and the control of pupils.

3. ———. The teacher has the right to require a pupil to answer questions which tend to elicit facts concerning his conduct in school.

4. ———. The pupil is answerable for acts which tend to produce merriment in the school or to degrade the teacher.

5.—. Open violation of the rules of the school cannot be shielded from investigation under the plea that it invades the rights of conscience.

6. BOARD OF DIRECTORS. The board should be sustained in all legitimate and reasonable measures to maintain order and discipline, to uphold the rightful authority of the teacher, and to prevent or suppress insubordination in the school.

This case involves the right of a teacher to require a pupil to answer questions concerning his conduct in school, or to testify against himself.

Burritt Harwood, a member of the high school department, having broken certain rules of the school, was suspended by the superintendent for refusing to answer a question relating thereto. The pupil's father petitioned the board of directors to restore the pupil. The board having investigated the facts adopted the following:

“*Resolved*, That the school board sustain Prof. Shepard in his suspension of Burritt Harwood, *provided*, Burritt Harwood be reinstated if he answer the question, for the refusal to answer which he was suspended, subject to such further action as may be taken by the principal or school board for making and circulating the caricature.” The president and four other members voting for, and one against the resolution. From this action of the board, S. Harwood appealed to the county superintendent, who reversed their action. The board, through their president, appeal to the superintendent of public instruction.

The power of the parent to restrain and coerce obedience in children cannot be doubted, and it has seldom or never been denied. This principle applies equally to the teacher or to any one who acts *in loco parentis*. Boards of directors and their agents, the teachers, may establish all reasonable and proper rules for the government of schools, and to control the conduct of pupils attending the same. “Any rule of the school not subversive of the rights of

the children or parents, or in conflict with humanity and the precepts of divine law, which tends to advance the object of the law in establishing public schools, must be considered reasonable and proper." *Burdick v. Babcock*, 31 Iowa, 562.

The superintendent had occasion to leave the high school in charge of his assistant while he should attend to official duties elsewhere. On his return about 4. P. M., the assistant reported that there had been much disorder on the part of some of the pupils, and that she had required several of the pupils to remain and report their misdemeanors to the superintendent. Burritt Harwood being called upon, said, in substance, I have two misdemeanors to report: I threw snow into the lower hall during recess, and I passed a piece of paper across the aisle to my brother's desk. Both are recognized as violations of the rules of the school. The nature and magnitude of the first are readily discernible and need no further investigation; not so of the second, much depends upon the character of the "piece of paper" whether simply blank paper, or containing writing or other marks; being asked to state the nature of the paper, he at first answered evasively. Being further questioned, he replied that it was "pictorial"; that it was a "burlesque or caricature," that "it represented the school-house and some person or persons," that "the person or persons represented were connected with the school." The further question "whom he had intended to burlesque," after some hesitation, he declined to answer. For this act of disobedience he was suspended.

The question which he refused to answer appears to differ in no essential feature from those previously answered. By it the teacher simply sought to discover an additional fact in connection with the case. If he had

a right to ask the former he had the latter. If there is any reason why the pupil had the right or should claim the privilege of declining to answer the last, he should have stated it. Certainly no good reason appears from the nature of the offense, and the degree of punishment which it merited depended upon the information which the teacher sought to obtain by this and the previous question. If the paper contained simply the solution of a problem or something connected with his lesson, it merited one degree of punishment; if its purpose was to create merriment among the pupils, thus diverting their attention from their studies, it required another degree; if, by it, the pupil sought to bring ridicule upon a teacher, to the prejudice of the good order and government of the school, still another; each would be a violation of rules, but not each equally punishable. The claim of appellee that it was an attempt to pry into the secrets of the heart, and was a violation of the right of conscience, is scarcely sustained by the facts. The question "whom did you intend to represent," is essentially equivalent to "whom did you represent." Its purpose evidently was not to find out the thought or intent, but the *act* of the pupil. The question was simply, what was the character of the picture drawn and circulated to the disturbance of the school. It does not appear how the rights of conscience would be violated in answering the question. It may be true that the picture itself if produced, would furnish the best evidence, but the teacher clearly had the right, in its absence, and knowing nothing of its nature beyond what the pupil had already revealed, to seek this information directly and immediately by proper questions. Nor can the pupil shield himself under the provision of the law that a prisoner at the bar cannot be compelled to answer questions which will tend to render him criminally

liable or expose him to public ignominy. He is, in no proper sense accused of crime before a court of law, authorized to sit in judgment under a criminal code.

The picture, which was afterwards produced, reveals anything but a right spirit in the pupil. Probably no one who has seen it doubts that it is a coarse caricature of the superintendent and his assistant. His refusal to answer was evidently not that he could not conscientiously do so, nor that it would tend to criminate himself, but was a deliberate act of insubordination. All the attendant circumstances, the evasive and studied replies to the superintendent's questions, the caricature itself, and its circulation through the school during the absence of the superintendent, together with a previous malicious caricature of the same nature, all reveal a disregard for the regulations of the school, the respectful conduct due from a pupil and an *animus* toward the teacher anything but proper.

In our opinion unnecessary stress was laid, in the trial before the superintendent, upon the technical ground of suspension by the superintendent. The board having had the whole subject under investigation, including statements of the offenses from both the superintendent and the pupil, sustained the superintendent, or in other words, suspended the pupil conditionally from the school, as they probably had a right to do for any one of the offenses named. This being a discretionary act, due weight must be given to such action by an appellate tribunal, especially should the board be sustained in all legitimate and reasonable measures to maintain order and discipline, to uphold the rightful authority of the teacher, and to prevent or suppress insubordination in the school.

REVERSED.

ALONZO ABERNETHY,

Superintendent of Public Instruction.

June 8, 1874.

JOHN S. DAVID V. INDEPENDENT DISTRICT OF BURLINGTON.

Appeal from Des Moines County.

1. SCHOOL. Every person between the ages of five and twenty-one years has the right to attend school in the district in which he resides, regardless of considerations relating to race, nationality, the holding of property, or the payment of taxes.

2. ———. The payment of school taxes does not entitle non-residents to school privileges.

3. ———. The board have authority to determine when, and upon what terms, non-resident pupils may attend the schools of their district.

This appeal is brought to compel the board of directors of the independent district of Burlington to admit into the public schools of said district appellant's children, without payment of tuition, on the ground that he is a large tax-payer in the district; the county superintendent having affirmed the action of the board in refusing to admit them.

The appellant resides about a mile beyond the limits of the independent district of Burlington, and near the school in his own district; but he claims that this school is not of suitable grade for his children.

The law requires the board of directors to provide school facilities for all the children in their own district, and contemplates that they shall, in all cases, determine whether children who are not residents, shall be permitted to attend the schools thereof, and upon what terms Section 1793.

It is claimed by the appellant that his children are entitled to attend school in the independent district of Burlington without the payment of tuition, for the reason that he owns property in said independent district, and pays taxes thereon; and if the payment of taxes could

ever entitle a person to such privileges, it doubtless would in this case, as he introduces the certificate of the county auditor to show that his school taxes for 1874 were \$406.08. There is, however, no provision of law upon which to base such claim; nor would such provision well accord with the spirit of our laws relating to public schools. These laws are founded upon the broad principle that every person in the state between the ages of five and twenty-one years, is entitled to the privilege of attending the public schools.

This principle is wholly unencumbered by any considerations relating to race, nationality, the holding of property, or the payment of taxes.

To prevent confusion and the over-crowding of particular schools, it is necessary to point out *what school* each pupil has the right to attend. A more equitable rule could not have been devised, than that which prescribes that the pupil may attend school in the district in which he resides. The simplicity and equity of this rule are apparent. Every person has one place of residence, and no more; the place of residence is generally determined without difficulty, and is not usually abandoned for trivial causes.

To introduce any conditions into the laws dependent upon property considerations, would be to outrage the fundamental principles of our free school system.

To further promote the convenience of the people, and to give elasticity to the rule, the board of directors may, when circumstances require, permit non-resident pupils to attend the schools of their district.

AFFIRMED.

ALONZO ABERNETHY.

Superintendent of Public Instruction.

February 20, 1875.

MARY M. THOMPSON V. DISTRICT TOWNSHIP OF JASPER.

Appeal from Adams County.

1. TEACHER. When a teacher is dismissed, in violation of his contract, an action in the courts of law, on the contract, will afford him a speedy and adequate remedy; when discharged for incompetency, dereliction of duty, or other cause affecting his qualifications as a teacher, he has the right of appeal.

2. ———. The teacher is entitled to the counsel and co-operation of the subdirector and board in all matters pertaining to the conduct and welfare of the school.

The board of directors discharged Miss Mary M. Thompson for dereliction of duty as a teacher in one of the public schools of the district. She appealed to the county superintendent, who reversed their decision; from this action, the board, through their president, John McDevon, appealed to the superintendent of public instruction.

At the hearing before the county superintendent, the board filed a motion to dismiss the case, for want of jurisdiction, insisting that the teacher, having been dismissed in accordance with the provisions of section 1734, Code, her proper remedy was an action at law for damages.

When a teacher is dismissed, in violation of his contract, an action in the courts of law, on the contract, will afford him a speedy and adequate remedy; when discharged for incompetency, dereliction of duty, or other cause affecting his qualifications as a teacher, he has the right of appeal to the county superintendent, who is the proper officer to review questions of this character, and to determine whether the board have in the exercise of their authority violated the law or abused their discretionary power. Questions concerning the validity of contracts, the right to recover for services performed, and

the interpretation of law, belong especially to judicial tribunals. Questions concerning the character and qualifications of the teacher, and his management of the school, are, by appeal, within the jurisdiction of the county superintendent.

The motion to dismiss was properly overruled

The charges of dereliction were, want of promptness in commencing school in the morning, and an occasional refusal to hear the recitation of one or more of her pupils. For this dereliction there appear to have been some extenuating circumstances. Under the contract, it was the subdirector's duty to have the fires built. The boy employed to do this work often failed to have the school-house in comfortable condition at nine o'clock; the teacher usually made up lost time by teaching after four o'clock, and there is no evidence that the subdirector or board ever advised her with regard to the performance of her duties. The board convened at the school-house without previous notice to the teacher, and after taking the testimony of some of her pupils, unanimously voted to discharge her.

AFFIRMED.

ALONZO ABERNETHY,

Superintendent of Public Instruction.

May 8, 1876.

M. M. CROOKSHANK V. DISTRICT TOWNSHIP OF MAINE.

Appeal from Linn County.

1. APPEAL: *When an adequate remedy.* From the exercise of ordinary discretion in the performance of an official duty, enjoined by law upon the board, appeal may be taken to the county superintendent; but from a refusal to act, or from an action thereon clearly designed to defeat the purpose of the law, an application to the courts of law to compel the performance of the enjoined duty will afford the most speedy, and in some cases the only, adequate remedy.

2. **INDEPENDENT DISTRICTS:** *Formation of.* The opportunity to vote upon the question of forming independent districts from the subdistricts of a district township ceased July 4, 1876, by the taking effect of chapter 155, laws of 1876.

A petition purporting to be signed by one-third of the legal voters of the district township of Maine was presented to the board March 20, 1876, asking that a meeting of the electors be called to vote upon the question of independent organizations.

The board ordered that the meeting be held on the day for the next presidential election. On appeal this action was reversed as not being in compliance with the law, and designed to defeat the purpose for which it was intended, and the board was ordered to call the meeting in time to permit the formation of independent districts if so determined by vote of the electors. H. O. Bishop appeals to the superintendent of public instruction.

The action of the board in deferring the vote to determine the question of independent district organizations until the November election, was evidently for the purpose of defeating the measure, since by the provisions of section 1804, Code, the organization of such independent districts shall be completed on or before the first day of August of the year in which said organization is attempted.

From the exercise of ordinary discretion in the performance of an official duty enjoined by law upon the board appeal may be taken to the county superintendent; but from a refusal to act or from an action thereon clearly designed to defeat the purpose of the law, an application to the courts of law to compel the performance of the enjoined duty will afford the most speedy and in some cases the only adequate remedy.

The examination of the issues involved in the case can

be of no avail since the opportunity to vote upon the question of independent district organizations no longer exists, the law authorizing the formation of such districts having been repealed to take effect July 4, 1876. Chapter 155, laws of the sixteenth general assembly.

The decision of the county superintendent is, therefore, reversed and the case dismissed.

REVERSED.

ALONZO ABERNETHY,

Superintendent of Public Instruction.

July 21, 1876.

W. C. MC NEAL V. J. W. CARY, COUNTY SUPERINTENDENT.

Appeal from Appanoose County.

1. REVOCATION OF CERTIFICATE: *Effect of.* Conditions made in the revocation of a certificate must be within the jurisdiction of the county superintendent, and must apply to the whole county.

2. NEW TRIAL. A new trial for the revocation of a certificate must be proceeded with as if no trial had been held.

In this case charges of immorality were preferred against the appellant. The county superintendent, after a legal investigation, ordered as follows:

“That W. C. McNeal has acted imprudently, unwisely, and in excitement, immorally; that he shall cease to teach in said district, (district number six, Walnut township); that in compliance with the above his certificate is not revoked.” “Otherwise, otherwise.”

On the 20th of January, having learned that the appellant had not ceased teaching, this additional order was made by the county superintendent:

“Whereas, upon due notice of the above decision, W. C. McNeal has not ceased to teach in the school district specified, now, therefore, in pursuance of the provisions of section 1771, of the school law of the state of Iowa the said certificate is hereby revoked.”

From this action of the county superintendent, Mr. McNeal appeals to the superintendent of public instruction.

While the power of the county superintendent to revoke a certificate is undoubted, the exercise of this power must be in strict accordance with the provisions of law.

A revocation may be based upon general conditions, especially where the moral character of the party is in question; but the effect of those conditions must be co-extensive with the county wherein such certificate is given, and must be within the jurisdiction of the county superintendent.

The conditional revocation of the 12th of January was based upon a condition not within the jurisdiction of the county superintendent, and only local in its application.

The power to remove a teacher from his position is vested in the board of directors, under section 1734. Hence the additional order of January 20, which was based upon the same condition, is not legal.

To test the merits of the case, and to give the county superintendent an opportunity for remedying the defect of his first order, the case is remanded before him for a rehearing, and the former decision, because not in conformity with the provisions of law, is

REVERSED.

C. W. VON COELLN,

Superintendent of Public Instruction.

March 20, 1877.

WM. DONALD V. DISTRICT TOWNSHIP OF SOUTH FORK.

Appeal from Wayne County.

1. SALARY OF TEACHERS. The salary of teachers should be in proportion to their ability and responsibility, and not equal when these circumstances differ materially:

2. **CONTROL OF SALARIES.** The control of salaries is wholly within the power of the board and cannot be determined by an appeal, because it is not within the jurisdiction of county or state superintendent to order the payment of money.

On the 18th day of March, 1878, the board of directors of the district township of South Fork made an order fixing the salaries of teachers in the township for the summer schools at the uniform price of twenty dollars per month. From this action Wm. Donald appealed to the county superintendent, who affirmed the action of the board. From his decision Wm. Donald appeals to the superintendent of public instruction.

It is alleged by the appellant that the county superintendent erred in deciding that the board did not violate law in voting that the same amount of salary should be paid to the teacher in each subdistrict. It is claimed that the board should have provided for a higher salary in some schools of the township.

The difficulty with appellant's counsel is that he believes the note to be a part of the law.

My predecessor gave his own views of the employment of teachers and I most fully agree with him in his view.

The law leaves the whole matter to the directors and presumes that they will deal equitably.

Unfortunately, selfishness is a nearly universal characteristic of human kind, and too often the majority, representing weak districts, weak both in numbers and in property, demands an equal distribution of the money on hand for teachers' pay.

The law organizing the rural independent districts, passed in 1872, arose from the feeling that this selfishness was working injustice to little towns and wealthy and populous subdistricts. The creation of these independent districts works an injustice to the weaker districts, for it

is proper and desirable that the wealthier districts should aid their weaker neighbors to sustain fair schools.

With regard to this case, we do not see wherein the board violated law. The idea of prejudice is slightly apparent from the testimony, but not sufficiently to reverse the action of the board.

That equity has not been observed seems very evident, for it must be presumed that a larger school population requires a better teacher; and if a better and more experienced teacher is needed, a better salary ought to be paid.

There are other considerations. Generally the expense of living is greater in the town than in the country; the probability is that a larger tax is paid by the town than by the country.

We are not able at this distance to determine whether twenty dollars is a sufficient compensation for the teacher of subdistrict number four of South Fork; but if twenty dollars is only sufficient compensation for the country subdistricts, it is our belief that a higher compensation should be given for the teacher in the town.

It is out of our jurisdiction to give advice to the board of directors, what to do in this case, after determining that we have no power to reverse their action; but we suggest that equity would be served if they should pay the five dollars per month assumed by Mr. Anderson.

After giving our views thus in full, we must agree with the county superintendent, and therefore the decision of the county superintendent is

AFFIRMED.

C. W. VON COELLN,

Superintendent of Public Instruction.

June 29, 1878.

JOSEPH HEATON VS. I. W. GARD.

Appeal from Ringgold County.

EVIDENCE. In the trial for revocation of certificate testimony may be introduced to establish the general character and disposition of the teacher.

Joseph Heaton prefers charges before the county superintendent of Ringgold county against I. W. Gard, a teacher employed in one of the schools of said county. The object of said charges was the revocation of a certificate granted by said county superintendent to said Gard.

W. J. Work, county superintendent of said county, after due examination and trial revoked the certificate, and I. W. Gard brings an appeal to the superintendent of public instruction.

The evidence shows that under provocation Gard struck the son of Mr. Heaton, the plaintiff, with a large hickory rod, in such a manner as to lame him. There is also introduced in evidence the record of dismissal of said Gard from a school in Union county for unbecoming conduct, showing a tendency to great violence and the attempted use of dangerous weapons.

This evidence was objected to, but the objection was overruled. We think the county superintendent properly admitted the evidence, since the law says (section 1771) that a county superintendent may revoke a certificate for the same reasons for which he would have withheld the same.

If the county superintendent had been in possession of said records when the examination of Mr. Gard took place he properly might have withheld the certificate, because he might have feared that Mr. Gard was not a proper person to administer discipline. That the manner of administering discipline in the case under considera-

tion was unwarranted is clearly shown, unless we admit the unproven statement that the scholar attempted to use a knife.

We cannot discover any unfairness, much less a showing of malice or prejudice, on the part of the county superintendent in giving his decision, and therefore his decision is hereby

AFFIRMED.

C. W. VON COELLN,

Superintendent of Public Instruction.

April 22, 1879.

VAN VLEET & WHETSTONE VS. M. H. FRAME.

Appeal from Lee County.

1. EVIDENCE. Must be conclusive to warrant the revocation of a certificate, upon charges made against the moral character of a teacher.

2. EVIDENCE. In relation to improprieties said to have been committed several years previous to the trial before superintendent, is entitled to little or no consideration.

3. CHARGES. Must be fully and clearly sustained.

On the 24th of December, 1880, a petition was presented to the county superintendent of the above named county by Mr. Van Vleet and Mr. Whetstone, asking said superintendent to revoke the certificate of Mr. Frame, a teacher in said county.

On trial the county superintendent refused to revoke certificate of Mr. Frame, and the petitioners appealed to the superintendent of public instruction, who, on the trial of the case remanded the case for a new trial, in order that certain testimony ruled out on the former trial might be admitted.

After several postponements the case was heard on the 2d of November, and on the 7th of November the county superintendent rendered his decision revoking the certifi-

cate of Mr. Frame, on the ground that he did not possess a good moral character. From this decision Mr. Frame appeals to the superintendent of public instruction.

The petitioners charge:

1. That Mr. Frame does not possess a good moral character.

2. That he does not possess the essential qualifications for governing and instructing youth.

3. That he has been guilty of gross immorality and undue familiarity with children under his charge.

4. That he has shown partiality, and has neglected properly to teach the branches required.

The first charge is quite general in its application, and whether or not it has been sustained can be determined only by a careful consideration of all the testimony in the case. The petitioners evidently relied upon this charge and the other charges were designed to strengthen the case.

By an examination of the testimony relating to the other charges we shall be better able to determine whether the county superintendent erred in revoking Mr. Frame's certificate upon the ground that the charge of a lack of moral character was sustained.

Relating to the charge of incompetency there is no evidence going to show that Mr. Frame is lacking in scholarship, or ability to govern and instruct his pupils in an efficient and proper manner, except the testimony of some witnesses which relates rather to the charge of partiality. On the contrary there is a large amount of evidence going to show that Mr. Frame is a good and successful teacher.

The next charge will be considered under two divisions—first, gross immorality and second, undue familiarity with children under his charge. As sustaining the first,

the testimony of Amelia Hancock was offered. It is shown that the facts testified to by this witness occurred between three and four years ago.

Such evidence is entitled to little weight, since it is the presumption of law that within the time intervening a reformation may have occurred.

In regard to the second part of this charge, the testimony is somewhat conflicting; but the evidence sustaining such charge was confined to the testimony of young children, as opposed to the testimony of several persons of maturer years.

The last charge is that of partiality, and a neglect to teach properly the branches required. In our judgment this charge was not sustained, and since the county superintendent did not base his decision upon this charge, we deem it unnecessary to review the testimony relating to it.

It appears from the testimony, that Mr. Frame has at times lost sight of that dignity and bearing which should characterize a man in his position; that he may have erred in permitting his pupils to engage in amusements—which, to say the least, were not calculated to elevate or improve them. But after a careful and somewhat protracted study of all conflicting testimony in the case, it does not appear that he is of immoral character.

While we do not believe that prejudice, or intentional abuse of discretion on the part of the county superintendent, entered into his final decision, we are compelled to hold that the evidence does not sustain him in revoking the certificate, and his decision is therefore

REVERSED.

J. W. AKERS,

Superintendent of Public Instruction.

Des Moines, Iowa, January 20th, 1882.

MARY E. POTTER VS. A. H. STERRETT, COUNTY SUPERINTENDENT.

Appeal from Tama County.

EVIDENCE. Having any bearing upon the case, even though remote, should be admitted on trial before the county superintendent for the revocation of a teacher's certificate.

On the 15th of September, 1881, the county superintendent refused a certificate to Miss Potter, on the ground that said county superintendent was not satisfied that the applicant possessed the essential qualifications for governing and instructing children and youth.

On the first day of October, Miss Potter applied to the county superintendent for a re-hearing; such re-hearing was held on the 4th of November and not being completed at that time the hearing was continued to the 8th of November.

On the 7th of November the county superintendent made out and mailed to Miss Potter a certificate of the usual form, except that the words "aptness to teach and ability to govern" were stricken out.

This certificate was refused and returned to the county superintendent. On the further hearing of the case the county superintendent on the 8th of November re-affirmed his former decision of September 15th, refused Miss Potter a certificate and dismissed the case.

From this decision Miss Potter appeals to the superintendent of public instruction.

It is urged by appellant in her affidavit, that the county superintendent closed the hearing of the case on the 8th of November, without affording appellant's counsel the opportunity asked for by them to offer testimony showing prejudice on the part of the county superintendent against the appellant. We find evidence of the

fact that testimony offered was excluded in the transcript and we regard it very unfortunate that the county superintendent did not allow all testimony offered to be received.

Any testimony he believed to be incompetent might have been ruled out by him, and exceptions taken by counsel to his rulings, the testimony in question would then become a part of the transcript of the case, and this tribunal could decide whether the county superintendent erred in ruling it out.

Our only course under the circumstances is to remand the case to the county superintendent with instructions to rehear the case for the purpose of allowing the testimony offered at the former trial to be introduced.

REVERSED AND REMANDED.

J. W. AKERS,

Superintendent of Public Instruction.

Des Moines, Iowa, January 25, 1882.

HIRAM BLAKE V. DISTRICT TOWNSHIP OF MASSENA.

Appeal from Cass County.

1. SCHOOL PRIVILEGES. Residence of the child determines.
2. ———. All persons under the age of twenty-one years, entitled to attend school, whether married or single.
3. COUNTY SUPERINTENDENT. Must try the case upon the basis of facts as they existed at the time the board took action.
4. TAXES. A tax voted by the electors for the building of a school-house must be so expended by the board.

On the 23d day of September, 1882, at an adjourned meeting of the board of directors of said district township, an order was made refusing to re-district the said township in accordance with the request and desire of some of the electors.

From this order of the board Hiram Blake appealed

to the county superintendent, who reversed the action of the board and created a new subdistrict composed of sections 15, 16, 21 and 22. W. H. Kreamer, president of the board appeals to the superintendent of public instruction.

By agreement of all parties no written argument accompanies the transcript of proceedings before the county superintendent.

Appellant assigns error on the part of the county superintendent as follows:

1. That in the determination of said proceeding, adverse to said board of directors, the county superintendent erred in ordering the creation of a new subdistrict.

2. That said superintendent erred in creating a subdistrict for less than fifteen pupils.

3-4. That he erred in admitting as resident pupils of the district prayed for, certain pupils residing temporarily therein, at the time of action taken by the board, but who were not in the proposed subdistrict at the time of hearing before the county superintendent.

5. That said county superintendent erred in admitting the names of persons under twenty-one years of age; but who were married and were mothers of families.

6. That the county superintendent erred in determining from the whole testimony that a new district was necessary.

—1. The first assignment is identical with the last, and will be noticed in conclusion.

—2. Was the new district created for the accommodation of less than fifteen pupils?

Appellant admits in his fourth assignment that the required number of pupils were residing in the proposed new district at the time of action taken by the board; but says that some of them were residing temporarily in

the district, whose parents reside out of the territory in question. The pupils whose residence is disputed, were young men working by the month for resident free-holders of the district. Were they properly enumerated as resident pupils?

The law specifies that the residence of the child, or youth, governs and not that of his parents.

If young men leave their homes to work for others the time for which they may remain is often indeterminable, and in many cases they remain through the winters to attend school. The law is to be constructed in their interests, and it has always been held that they may attend school in the district where they are for the time living and working—free of tuition.

Such children and youth, are as a rule, and there are probably few exceptions, enumerated as residents of the districts in which they are for the time being employed, and such district receives on account of them an increased share of the semi-annual apportionment. This clearly establishes their residence.

3-4. These points have been answered in the foregoing remarks.

5. The law provides that persons between the ages of five and twenty-one, shall be enumerated as of lawful school age, and are therefore entitled to attend school if they desire. No distinction is made between the married or unmarried. In the present instance the married person under twenty-one years of age was properly enumerated. It is therefore held that at the time of action by the board the proposed new district had the required number of resident pupils.

This being the case what bearing should the fact, that, at the time of hearing before the county superintendent there was less than the required number of pupils, in the proposed district, have upon his decision.

We think none at all. He is to determine—not, what should be done now—but what should the board have done in view of the facts existing at the time of action complained of.

6. Did the county superintendent commit error in establishing the new district? The center of the new district is also the center of the district township. At their regular meeting in March, 1881, the electors voted a tax of \$700 upon the district township, to build a new school-house at or near the center of the township.

This money was subsequently divided up and transferred to the contingent and teachers' fund, by the said board of directors.

We have seldom met with a more flagrant violation of the plain provisions of law on the part of a district township board. Section 1723 and Note "A," school-laws of 1880, provides that a tax voted by the electors for the purpose of building a school-house *must be so used*, and it is the imperative duty of the board to proceed at once to carry out by contract, the expressed will of the people.

It appears from this action of the people that a school was needed at this point, and inasmuch as the order of the county superintendent secures what the board failed to provide, a central school, it is highly probable that the new district is consistent with the wishes and interests of the people.

It is therefore held that in refusing to create the new district the board erred and the decision of the county superintendent is therefore

AFFIRMED.

J. W. AKERS,

Superintendent of Public Instruction.

Des Moines, Iowa, March 21, 1883.

PART IV.

DIGEST OF ATTORNEY-GENERAL'S OPINIONS.

CHANGE OF BOUNDARIES, OR DIVISION OF TOWNSHIP INTO SUBDISTRICTS.

1. Changes must be made at special meeting, called for that purpose by a written notice, served on or sent to each member.
2. A division made by full board without such notice would be erroneous, but still not void, and can be corrected afterward.
3. A subdirector elected for such subdistrict would be a legally appointed officer.—BISSELL, May 16, 1866.

MANDAMUS, APPEAL, TAX.

1. A board of directors neglecting or refusing to perform a duty required by law may be compelled thereto by *mandamus*—not by appeal to county superintendent.
2. When the board act, but act erroneously, an appeal to the county superintendent is the proper remedy.
3. A tax levied before the division of a district by such division becomes void.—BISSELL, July 19, 1866.

REFUSING A TEACHER'S CERTIFICATE.

1. Appeal may be taken from the act of a county superintendent refusing or revoking a teacher's certificate.
2. The county superintendent should be sustained by the superintendent of public instruction, except in clear cases of passion, prejudice, or violation of duty.—BISSELL, March 16, 1867.

REDISTRICTING APPEAL.

1. An appeal may be taken from the act of a board refusing to redistrict a township.
2. On such appeal the county superintendent can redistrict.

CENSUS OF CHILDREN AT ORPHANS' HOME.

Children at the Orphans' Home should, for school purposes, be enumerated in the district in which they reside at the time.—O'CONNOR, July 27, 1867.

TEACHERS' CERTIFICATES.

The endorsement in one county of a teacher's certificate issued in another county is not a compliance with the law.

There should be another examination.—O'CONNOR, July 29, 1867.

DISTRICT AFFECTED BY TRANSFER OF TERRITORY.

The district affected or referred to in Section 1797 (School Law, 1866) is the district from which territory and school population are taken, and whose board must give their consent. The other is not affected in any sense contemplated by law.—O'CONNOR, November 15, 1867.

SCHOOL FUND.

The law does not authorize the loaning of the permanent school fund to school districts, nor could such district give the required legal security.—O'CONNOR, December 16, 1867.

RIGHT OF AN ALIEN TO HOLD THE OFFICE OF COUNTY SUPERINTENDENT, AND RECEIVE PAY THEREFOR.

An alien can not hold the office of county superintendent, or any other office for which he is not qualified to vote.

Having served in the office, he may receive from the supervisors pay as a gratuity, but cannot demand it as a right.

The board of supervisors in such case should declare the office vacant, and elect a successor.—O'CONNOR, February 28, 1868.

NEITHER THE ELECTORS NOR THE BOARD OF A DISTRICT TOWNSHIP CAN ISSUE EVIDENCE OF INDEBTEDNESS.

There is no law authorizing either the electors or board of a district township to issue bonds for any purpose, or to fix rate of interest.

For debts or liabilities incurred, the president may draw an order for the amount, to be countersigned by the secretary, which, if not paid on presentation, will thereafter draw interest

at six per cent. If bonds are issued they are not legal, and are not binding, except to make the person or agent drawing them personally liable.

Boards can only draw orders for debts already contracted.—O'CONNOR, March 18, 1868.

USE OF THE LORD'S PRAYER IN SCHOOL.

Boards have no power to direct or prohibit the Lord's Prayer in school. Teachers may, on their own motion, repeat the Lord's Prayer; but, while they can enjoin silence, they can not compel pupils to bow their heads, much less can they expel pupils for not complying with such rule.—O'CONNOR, April, 1868.

POWER OF BOARDS IN TAXES.

Boards of directors having failed to levy a tax at their first regular meeting, cannot do so during the year at any subsequent meeting, and a tax so levied would be illegal. O'CONNOR, May 6, 1869.

USE OF SCHOOL-HOUSES FOR RELIGIOUS AND SCIENTIFIC PURPOSES.

The board of directors have no right to allow the use of the school-house when it will interfere with the school, but they may at such other times allow its use for religious services, scientific lectures, or for matters of a public nature. The electors also may authorize the board so to do.—O'CONNOR, June 18, 1869.

SCHOOL-HOUSE SITE.

When a board have established a school-house site and on appeal the county superintendent has selected a different site, and his act is sustained by the superintendent of public instruction, the board can not act again to change said site until it has been tried, or the population or other circumstances have materially changed.—O'CONNOR, July 28, 1869.

FORMATION OF DISTRICT TOWNSHIPS.

The fact that the township trustees were not promptly called together will not invalidate the establishment of the district, if it had a *de facto* existence.

Although an order fixing the boundaries was not issued the electors having agreed on boundaries and the district maintained on these boundaries establishes said district.—O'CONNOR, May 23, 1870.

ADJUSTMENT OF BOUNDARIES.

This subject lies almost exclusively in the educational department.

The action of the board is final unless an appeal is taken to the county superintendent, whose decision is final unless an appeal is taken to the superintendent of public instruction whose decision is final.

An appeal to the county superintendent or superintendent of public instruction stays action until the decision is rendered.

Changes made in boundaries take effect at next annual meeting in March.—O'CONNOR, March 7, 1871.

FULFILLMENT OF CONTRACT.

The board of directors is legally the same though composed of new members.

A teacher possessing the legal qualifications can collect pay under contract if the board refuse him permission to teach.—O'CONNOR, March 27, 1871.

POWER OF BOARD TO BUY OR SELL REAL ESTATE.

A board of directors can make no purchase or sale of real estate without authority of the electors.—O'CONNOR, June 13, 1871.

ABROGATION OF INDEPENDENT DISTRICT.

There is no provision of law for annihilation of independent district.

There is but one board and the action of such board will bind it though new members are elected.—O'CONNOR, August 4, 1871.

SCHOOL-HOUSE FUNDS—LOANING BY TREASURER OF BOARD.

The treasurer is technically liable for loaning school-house funds, but if it is proven that interest does not accrue to himself he can not be convicted as *intention to defraud* is an element of embezzlement. A low rate of interest from a loan in bank might not be wrong. The board can not loan funds. It is in both cases safer not to assume responsibility which the law does not authorize.—O'CONNOR, September 2, 1871.

LIABILITY OF TREASURER WHEN FUNDS ARE STOLEN OR LOST.

If the treasurer has exercised such diligence and care as he does with his own money he is not liable if it is stolen.—O'CONNOR, September 5, 1871.

THE LAW LIMITING A TAX TO TEN MILLS ON THE DOLLAR FOR SCHOOL-HOUSE PURPOSES DOES NOT PREVENT AN ADDITIONAL TAX TO MEET INDEBTEDNESS.

Where electors have failed to vote a tax to meet indebtedness the board can not levy said tax unless compelled by *mandamus*.

The treasurer should pay the orders first presented, unless the tax is levied specifically to pay a certain judgment, when it should be so applied.

The law says where subdistricts have built their own school-houses the tax should be assessed as justice and equity require.

When the new members of the board are qualified it is not proper for the former members to transact business.

On the third Monday in March the old members are out of office.—CUTTS, March 30, 1872.

INDEPENDENT DISTRICT.

All independent districts must be organized before August 1st. All taxes certified by the district township board for that year are void.—CUTTS, November 9, 1872.

INDEPENDENT DISTRICT.

An independent district can not be formed from a city or town within an independent district.—CUTTS, January 19, 1874.

OFFICER, REMOVAL OF BY THE BOARD.

The board of directors have no authority of law to remove one of its officers.—CUTTS, January 31, 1874.

TAXES—CERTIFICATION OF.

If the board in certifying a tax, instead of specifying a certain amount specify a rate per cent, while their action would be irregular it would not be so illegal as to render the tax void.

The case would be different if there should be an entire omission of or neglect to certify any tax since then, the supervisors could

not determine the per centum to be assessed.—CUTTS, February 9, 1874.

CITY LIMITS, EXTENSION OF—EFFECTS ON INDEPENDENT DISTRICT OF SAID CITY.

When the limits of a city are extended, the limits of the independent district in said city are correspondingly extended.—CUTTS, May 4, 1876.

TERRITORY ANNEXED BY EXTENSION OF CITY LIMITS—TAXES ETC.

The annexed territory becomes at once a part of the independent district of said city.

If the annexation is completed before the levy of taxes by the supervisors, the rate should be uniform over the whole district.

If however the annexation is not completed until after the annual levy, the rate of tax on the annexed territory will be the same as that on the district where it was taken.—CUTTS, October 30, 1876.

SCHOOL-HOUSE SITE—EXTENSION OF TOWARDS A DWELLING WHEN THE OWNER OBJECTS.

When a school-house site is within 30 rods of a house the site can not be enlarged towards the house if the owner objects. Said site may be extended by condemnation in the opposite direction.—CUTTS, October, 1876.

CONTRACT, TEACHERS'—WHEN SCHOOL-HOUSE IS BURNED DOWN.

A contract made with a teacher in all respects in conformity to law, in case the school-house burns down and the board fail to provide another, said teacher being ready to comply with his part of the contract can collect pay according to contract.

The amount of pay can not be more than his regular wages. If said teacher uses proper diligence to secure employment at something which he can do and secures employment, the board will pay him the difference between the amount received in his new work, and the amount of his wages under contract. In other words his actual loss should be made good.—McJUNKIN, January 15, 1877.

INDEPENDENT DISTRICTS, CONSOLIDATION OF.

The independent districts of a township may be consolidated into an independent district township. The boundaries of an independent district may be so changed as to form any number of districts less than previously existed. If in either case the proceedings are legal, the formation is valid.—McJUNKIN, April 10, 1877.

SCHOOL-HOUSE TAX—FAILURE OF DISTRICT
TOWNSHIP TO VOTE.

The only provision for voting a tax by the electors is at the annual meeting in March. If the electors refuse there is no remedy. The law makes them the sole judges of the necessity of such tax.

2. It is the duty of the board of directors to certify any tax voted by the electors.

3. If the electors refuse the only remedy is for the sub-district to tax themselves or wait until the legislature furnishes a legal remedy.

4. There is no *legal* indebtedness between subdistricts.—McJUNKIN, April 13, 1877.

SECTION 1798, SCHOOL LAWS 1876, APPLIES ALIKE
TO DISTRICT TOWNSHIPS AND INDEPENDENT
CITY DISTRICTS.—November 20, 1877.

(See in this connection Iowa Reports, 45, Page 53.)

Section 1798 is not restricted in its application to cases enumerated in section 1797; but is made to refer also to all cases where territory may be transferred to the district where it geographically belongs.—January 5, 1878.

APPEAL FROM ACTION OF COUNTY SUPERINTENDENT
—JURISDICTION.

The superintendent of public instruction has jurisdiction in all matters appealed from the action of county superintendents.—January 5, 1878.

LEGAL PAYMENT FOR SCHOOL-HOUSE SITE.

A compliance with the provisions of section 1827, School Law 1876, is all that is necessary. The money must be deposited for the owner and not for the mortgagee.—August 21, 1878.

SITE—CHANGE OF IN SUBDISTRICTS REFERRED TO IN SECTION 1798, SCHOOL LAWS 1876.

In case of change of site the house still remains under the control of the district to which it always belonged.—September 12, 1878.

PAY OF COUNTY SUPERINTENDENT DURING INSTITUTE.

The county superintendent is entitled to his *per diem* for time spent during the Institute.—September 25, 1873.

ASSETS, DIVISION OF.

1. In the division of assets between districts where changes in boundaries have been made, each should receive that part to which it is beneficially entitled.

2. Subsequent changes in the form of territory will not relieve that territory from its responsibility to assume its share of assets and liabilities.

3. Payment of amount due must be made to the party entitled to hold and use it.—November 6, 1878.

SCHOOL-HOUSE, CONTROL OF.

The electors may take the control of the school-houses out of the hands of the board of directors.—January 4, 1879.

INDEPENDENT DISTRICT—ORGANIZATION OF.

In fixing boundaries for a city or town district (Secs. 1,800 and 1,801), the board may include territory from a contiguous rural independent district.—June 7, 1879.

INDEPENDENT DISTRICT—ORGANIZING OF.

A city or town in an independent rural district can not organize as an independent city or town district.—June 19, 1879.

TEXT BOOKS.

An adoption of text books holds for three years, even though the form of the district is changed.—January 19, 1880.

INSTITUTE EXPENDITURES.

Institute funds may not be used to purchase reference books.—January 23, 1880.

ANNUAL STATEMENT—SEC. 1813.

The annual statement in independent districts must be pub-

lished in a newspaper, if one is printed in the district.—February 13, 1880.

ASSETS, DIVISION OF.

Taxes collected subsequent to the organization of independent districts from the sub-districts of a district township are assets which must be divided equitably among the independent districts. August 6, 1880.

APPEAL, TRIAL OF.

A party unwilling to give testimony may be compelled to do so by sections of Code 3692-3695.—April 9, 1881.

THE ASSETS AND LIABILITIES OF THE DISTRICT LOSING THE TERRITORY ONLY SHALL BE CONSIDERED.

Chapter 118, Laws of Nineteenth General Assembly.—McPHEARSON, October 7, 1882.

APPEAL WILL LIE.

Section 1763 was not repealed by Chapter 8, Laws 1880. And boards cannot be compelled to submit questions at such elections, general or special, other than those mentioned in 1807 of the code, and for the reason that other matters seem to be discretionary. No board or officer can be compelled to do that which is discretionary with him.—McPHEARSON, August 8, 1883.

CONTRACT—COMPLETION OF.

It is proper for the state superintendent to entertain any appeal that it is proper for a county superintendent to consider. An action pending between the boards may be rejected at any time before the completion of the transaction. A proposition and acceptance is supposed to complete a contract.—McPHEARSON, October, 20, 1883.

CHILDREN—ATTEND SCHOOL IN ADJOINING DISTRICT.

Without the voluntary consent of both county superintendent and board of directors of an adjoining district, children can not attend school in such adjoining district to the one they reside in.

From a refusal to give such consent an appeal does not lie to the county superintendent.—Applies to Sec. 1793. McPHEARSON, May 9, 1882.

Lands belonging to the state can not be condemned and taken for school-house purposes.

It would in effect make the state the defendant.—McPHEARSON, March 22, 1884.



PART V.

DIGEST OF SUPREME COURT DECISIONS.

AFFIDAVIT.

Affidavit may be amended to correct errors, mistakes, or any defects, so as to avoid technicalities and secure a fair trial.—11, 70; 18, 425; 22, 232.

APPEAL.

A mere irregularity in taking an appeal, or the notice thereof, is waived by the voluntary appearance of the parties.—19, 83.

The appellant has a right to dismiss his own appeal.—10, 390; 12, 351; 48, 19.

Not a case at law.—36, 413.

In cases of appeal, counsel cannot be employed at expense of district.—36, 413.

APPELLATE—TRIBUNAL,

Will not presume against the correctness of the finding, but always in favor of it.—8, 76; 8, 288; 9, 353.

AWARD.

Award of arbitrators may be set aside.—3, 577; 54, 286.

Award has same force as verdict of jury.—6, 466.

ASSETS.

Upon the division of a township district into independent districts, the board of the former are empowered to make a division of the assets, wherein their jurisdiction is exclusive, and their judgment can not be set aside in a collateral proceeding.—43, 444; 45, 391.

When a district township is divided into two or more districts, school-houses and real estate are to be estimated in making the division of assets.—36, 216.

ACTION.

An action within the jurisdiction of the board finds its correction in an appeal. But an irregularity, fraud or illegality may be remedied in the courts.—23, 408.

ASSETS.

The boards of directors of the two districts, or arbitrators chosen by them shall apportion the assets upon the reorganization of the districts, and their jurisdiction for this purpose is exclusive.—45, 104; 45, 391. But an appeal will lie.—45, 391. The action of the boards in settlement will not be set aside in the courts unless fraud or mistake is proven.—52, 153.

BOARDS.

Boards have power to dismiss or suspend pupils.—30, 432; 31, 562; 50, 145.

Boards have no power to bind the district in purchasing maps, charts, and other apparatus, without a vote of the electors.—25, 449; 26, 281; 28, 334.

Boards may bind the corporation by contracts entered into after the election of their successors and before their qualification.—13, 557.

Boards may levy additional tax necessary to maintain schools during the term required by law.—12, 414.

Boards may be legalized.—6, 391.

BONDS.

Power in division of assets. Section 211. Not entitled to pay. 55, 654.

In the absence of power to execute, no subsequent transfer of the same will give them effect, and they are void even in the hands of *bona fide* holders.—43, 48.

OFFICIAL BONDS.

Where one elected to office failed until after the time for him to enter upon his duties to file his official bond, which had been prepared, and the office was thereupon declared to be vacant, and he was subsequently appointed to the same office, whereupon the bond first prepared was filed; *held*, that the sureties thereon were not liable for the default of their principal.—44, 15

Bonds issued exceeding in amount five per cent. of the taxable property are void.—44, 122.

BOUNDARIES.

Boards of directors of independent districts can not change.—5, 390.

COUNTY SUPERINTENDENT.

It is the exclusive province of the court to construe writings constituting the cause of action.—37, 316.

CONTRACT.

Contract—binding, if acted upon by both parties, although not signed nor approved.—21, 592; 56, 476.

The consideration need not appear upon the face of the contract; it may be proven by parol.—5, 341.

Contract is binding if accepted and acted upon although not signed.—5, 341.

The teacher being permitted to enter upon the performance of the contract has a right to presume its approval.—35, 378.

If an agent make a valid contract without authority he is himself bound thereby.—37, 315.

The district township is bound by contract of subdirector when made according to instructions.—35, 361.

Deductions may be made from the contract price of a house for defects even after accepting the same.—3, 211.

Contract completed by letter unless revocation before that time is brought to the notice of the other party.—6, 279.

A written contract may be varied by a subsequent parol agreement, additional to the original, and upon a new consideration.—8, 65; 50, 98.

It is presumed that the written contract embraces all the agreement of the parties.—52, 130.

A school-house was erected under an agreement with the owner of the land upon which it was placed, that the district should have free use of the land as long as the school-house should remain thereon; held that the contract was not within the statute of frauds.—43, 466.

Verbal corporations may make verbal as well as written contracts, within the scope of their powers, and it was held not essential to the validity of the purchase that a vote of the directors therefor should appear upon the records.—54, 564.

It is within the power of the board to change a contract for building, but unless makers consent they are released.—50, 98.

DE FACTO OFFICER.

De facto officer, his acts affecting third persons can not be collaterally assailed.—14, 465.

DEFECT.

Defect in the complaint of proceedings not complained of by the parties appealing, not sufficient cause for reversal.—5, 414.

DISCRETION.

The local tribunals are invested with a large discretion, and their action should have great weight.—21, 594; 23, 410.

Discretion of school board can not be controlled by *mandamus* whether exercised wisely or unwisely.—24, 270.

DISTRICT TOWNSHIP.

District township can not incur indebtedness exceeding 5 per cent on taxable property of the corporation.—37, 546. Constitution, Article 11, Section 3.

District township shall coincide in boundary with civil townships. Section 1797, school laws provides the only exception.—41, 30.

District township not receiving on division of assets their just proportion of school-house property have a claim against those that obtain more than their just share.—36, 216.

ERROR.

The record must show error or it will be presumed correct.—1, 93; *note c.* 2, 551; 5, 374.

Error without prejudice. The judgment of the inferior tribunal will not be reversed for an error which did not prejudice the appellant.—13, 479; 15, 121.

Error must appear, the party appealing must satisfy the tribunal that there is error.—1, 472; 1, 513; 2, 147; 7, 4; 8, 288.

ELECTION.

The law contemplates three hours for meeting to elect sub-director.—37, 131; 39, 381.

Election to vote upon the organization of an independent district must allow voting from 9 A. M. to 4 P. M.—34, 308.

EVIDENCE PAROL.

Evidence parol is not competent to vary written.—1, 264, (*note f*); 2, 442; 6, 523.

Evidence parol, is admissible to show compliance with the conditions of a written contract.—1, 2nd, (*note f*); 3, 76.

The superior tribunal can act only upon the testimony on which the decree below was rendered.—1, 452.

When all the evidence is not before the appellate tribunal, the presumption is in favor of the correctness of the finding.—1, 482; 1, 513; 14, 429.

The ground of objection to, must be shown by the record, or superior tribunal will not disturb the ruling.—2, 46.

Evidence parol, is admissible to show that a written agreement, through fraud, accident, or mistake, fails to state the whole or true contract; yet this fact must be made conclusive.—15, 392.

A verdict must be clearly against the evidence, to authorize a reversal upon that ground alone.—14, 47.

The appellate court will not presume that improper testimony was admitted by the court below. A bill of exceptions is needed. 6, 75.

GARNISHMENT.

A corporation may waive exemption from.—25, 315.

HIGHWAYS.

Boards—-independent districts may secure.—55, 568.

INDEPENDENT DISTRICT.

Notice of election must provide for vote of all within the limits of the contemplated district.—17, 88.

Boundaries need not be confined to a single township.—25, 307.

INJUNCTION.

The county superintendent can not enjoin on the ground that teacher has no certificate. Such action may be taken by a citizen or resident of the district.—17, 229.

JURISDICTION.

Jurisdiction is acquired by the collection of taxes from and provision of schools for territory, although no action of boards had ever been taken.—25, 277.

Jurisdiction of boards in division of assets, is exclusive.—45, 104.

LIABILITY—PERSONAL.

Where a person contracts in an official capacity which is disclosed in the contract itself, he is not personally liable, although having failed to affix his official title.—7, 509.

A ministerial officer is liable for damages caused by his misfeasance or nonfeasance in office, but a judicial officer is not liable for judicial acts when it is not shown that he acted corruptly.—14, 510; 17, 155; 38, 47.

Where a public officer, other than a judicial one, does an act directly invasive of the private rights of others, and there is otherwise no remedy for the injury, such officer is personally liable without proof of malice and intent to injure.—24, 337.

The liability of the treasurer is absolute; it can not be varied or diminished, by the cause or manner of a loss.—40, 131; 37, 554; 5, 156; 39, 12.

LEASE.

See Contract.

MANDAMUS.

Boards may be compelled by *mandamus* to levy tax.—34, 514.

A writ of, not allowable when the party aggrieved has the remedy of appeal.—35, 448; 50, 648.

Mandamus will not lie to compel issuance of certificate.—52, 111.

A writ will not issue commanding an officer to do what is not within his power to do. If he has put it out of his power to do his duty, he may be liable in damages to one prejudiced by his act, but in such case *mandamus* will not lie.—44, 458.

MONEY.

When money is received belonging to another, the law implies a promise on the part of the receiver to pay it over.—11, 506.

MOTION.

The force and effect of a motion does not terminate with a change of officers, or members but remains in force until repealed. 35, 365.

NOTICE.

Notice to attorney binds the client.—1, 453.

The manner of serving must be shown.—6, 79.

A voluntary appearance by a defendance waives defects in the service of notice.—18, 20.

Notice of annual or subdistrict meeting. A failure to give, will not invalidate proceedings, if a meeting is held at the usual time and place.—10, 218.

OFFICE.

The only legal test to determine the title of an office is a writ *quo warranto*.—22, 86; 27, 528.

PARTY.

Party may elect which remedy he wishes to use, when he has power to use either.—3, 79. *See Action.*

PUPIL.

Pupil can not be excluded on account of his color, nor be compelled to attend separate school.—40, 519; 41, 693; 24, 270.

Pupil may be expelled for not obeying rules of the school, although instructed not to obey by the parent.—50, 145; 56, 573.

RECORD.

Where the record is silent, and a state of case can be supposed, under which the finding would be correct, that conclusion is adopted which is consistent with the ruling made.—5, 476.

Where the record is so confused that the appellate tribunal can not act with safety to the rights of the parties, the cause will be remanded for a re-hearing.—8, 79.

After proof of the loss of a record, its contents may be proved by secondary evidence —8, 301.

The failure of the secretary of the board to record all proceedings of board, and of district meetings, in separate books, or a record on loose sheets, will not render proceedings void.—8, 302.

RE-HEARING.

A re-hearing will be ordered where the necessity is made clearly apparent.—5, 404; 7, 232.

RESIDENCE.

Residence, meaning of. A person may have several residences.—1, 36, *foot note*; 24, 209; 25, 91.

REPAIRS.

Contracts for the repair of school-houses may be paid from the contingent fund, without being specially authorized by the electors.—25, 438.

SCHOOL ORDER.

School order not negotiable.—29, 342; 39, 496.

SCHOOL-HOUSES.

School-houses are not subject to a mechanic's lien.— 54, 81.

Electors may permit to be used for religious worship and Sunday School.—35, 197.

SCHOOL-HOUSE SITE.

School site. The power to fix a site carries with it the power to re-locate that site.—23, 411.

SUBDIRECTOR.

Subdirector must comply with rules and regulations made by the board for his guidance.—35, 365.

Subdirector is subject to rules and restrictions, not inconsistent with law, prescribed by the board.—40, 371.

STATE UNIVERSITY.

State University not a corporation.—42, 335.

SCHOOL DIRECTORS.

School directors have the power to provide for the children of one subdistrict attending school in an adjoining subdistrict, and to discontinue school in their own subdistrict 40, 369.

TRANSCRIPTS.

Transcripts should not be merely naked copies of papers, but should show their order, dates and connection.—1, 590.

TERRITORY.

The extent of—which may be added to a town or city district; for school purposes, is not limited by the law.—15, 436.

TEACHER.

The dismissal of a teacher is warranted where there is a failure to manage and govern the school, though the teacher was not delinquent in attempts to fulfill the contract.—21, 593.

TAXES—RATE.

The rate for teachers and contingent fund can be voted or fixed only by board of directors.—41, 180.

TAX.

A tax levied to pay the principal and interest of bonds is valid so far as it is within the municipal power, and beyond that it is invalid.—43, 49.

TAXES.

Taxes may not be levied by board of supervisors beyond the maximum rate.—45, 466.

If a school-house tax is not levied by the supervisors at the proper time, it may be levied subsequently.—49, 325.

Taxes voted and collected must be applied to building where the electors voted. The electors may not rescind their vote and direct the money expended elsewhere.—50, 648.

Taxes illegal—refunded.—56, 85.

TERRITORY.

Section 1798 provides for detaching territory only when both townships are organized as district townships and each is governed by a board of directors whose jurisdiction extends over the entire township.—45, 53.

TEACHER'S CONTRACT—WHEN NOT ENFORCEABLE.

No recovery can be had on a contract to teach school, made with a subdirector, but not approved by the president of the board, unless such approval has been waived and the contract ratified by the district; the fact that the teacher proceeds thereunder and completes the performance of the contract is not sufficient to constitute such ratification and authorize a recovery.—56, 573.

TERRITORY—CHANGE OF ASSETS AND LIABILITIES.

Where territory is set into an adjoining county or township, or attached to an independent school district in an adjoining county or township, for school purposes, or is restored from an independent district to the district township to which it geographically belongs, there must be an equitable apportionment of all assets and liabilities.—58, 77.

INDEPENDENT DISTRICTS—CHANGE OF BOUNDARIES.

The boundaries of an independent district may be changed and such change may include territory which became a part of such independent district at the time of its formation. No reason exists why the boundaries of an independent district as originally formed, can not be changed as readily as when territory is afterward attached to it.—58, 77.

PUPIL—SUSPENSION OF.

A board of directors has no power to adopt a rule which will deprive a child of school privileges, except as a punishment for breach of discipline or an offense of good morals.—56, 476.



PART VI.

BLANK FORMS.

NUMBER 1.

Form for Proceedings of District Township Meeting.

[Section 1717.]

March....., 188..

The electors in the district township of, in the county of, and state of Iowa, assembled at pursuant to previous notice. The meeting was called to order by the president at o'clock M. The secretary being absent, was appointed secretary.

The order of business was stated by the president.

On motion of Mr., a tax of dollars was voted for school-house purposes.

Mr. moved that a tax of eight hundred dollars be voted for the purpose of erecting a school-house in subdistrict No.

Mr. moved to amend by striking out "eight hundred dollars," and inserting "one thousand dollars," which motion was agreed to, and the motion as amended was decided in the affirmative.

Mr. moved to transfer dollars of unused school-house fund to teachers' (contingent) fund.

Mr. moved that the various powers conferred by law on the district meeting, which may be delegated to the board of directors, be and the same are hereby so delegated. After discussion, the vote was taken, and the motion was adopted.

On motion of Mr., the meeting adjourned.

.....,
Chairman.

.....,
Secretary.

NOTE.—It is essential that the secretary make a full and accurate record of the proceedings of the district township meeting, which should be submitted to the president for his approval at the close of the meeting, and afterwards recorded in the district records, or otherwise preserved.

These records, together with all certificates of the action of any subdistrict in relation to voting school-house taxes, must be submitted by the secretary, who is the proper custodian of the records, to the board of directors, at the meeting held on the following Monday, to form the basis of their action in apportioning and certifying school-house taxes to the board of supervisors.

NUMBER 2.

Form of Notice for Annual Meeting in Subdistricts.

[Section 1718.]

Notice is hereby given that a meeting of the qualified electors of subdistrict No., of the district township of in the county of, and state of Iowa, will be held at, on the first Monday in March, 188.., at o'clock, for the election of one subdirector, and the transaction of such other business as may legally come before it.

Dated,, 188..

.....,
Subdirector of Subdistrict No. ..

NOTES. (a) In case there is no subdirector, the above notice must be given by the secretary of the district township. It must be posted five days previous to the meeting, in at least three public places in the subdistrict. The notice should designate the hour of meeting, which cannot be earlier than 9 o'clock, A. M. See section 1789.

(b) When an organized district township is left without officers, or without a quorum, the above notice for a special election should be posted by the township trustees, in at least three public places in each subdistrict, changing the time of holding the election to suit the circumstances of the case. See section 1714.

NUMBER 3.

Form of Proceedings of Annual Subdistrict Meeting.

[Sections 1718, 1719, 1720.]

March, 188..

The electors of subdistrict No., of the district township of, in the county of, and state of Iowa, met pursuant to previous notice.

..... was appointed chairman, and secretary of the meeting.

On motion of Mr., the meeting proceeded to the election by ballot of one subdirector.

The chairman announced the result of the ballot to be as follows:

20 votes were cast for A B; 15 votes for C D; and 10 votes for E F; upon which A B was declared duly elected subdirector for the ensuing year.

Mr. moved that a tax of dollars be voted for the erection of a school-house in this sub-district.

The motion was lost.

On motion of Mr., the meeting adjourned.

.....,

Chairman.

.....,

Secretary.

NOTES. (a) If the electors desire to hold a caucus, it should be done before the subdistrict meeting is called to order. Only one ballot can be had for the election of subdirector, and a plurality will elect.

(b) The amount voted by the subdistrict must be certified to the next regular district township meeting.

(c) To avoid the levying of taxes upon the subdistrict, the district township may simply be requested, by a vote of the electors of the subdistrict, to build them a school-house, without asking for a definite amount of money.

NUMBER 4.

Form for Certificate of Election of Subdirector.

[Section 1719.]

We hereby certify that, at the annual meeting of subdistrict No., of the district township of, in the county of, and state of Iowa, held on the first Monday in March, 188..., was duly elected subdirector for said subdistrict.

.....,
Chairman.

.....,
Secretary.

NOTES. (a) This certificate, slightly varied, will answer in case of the election of a subdirector at a special meeting, called by the township trustees. In both cases it should be presented by the subdirector elect to the board of directors of the district township, and filed with the president of said district.

(b) In case of a tie vote, the fact should be certified in a similar manner to that given in the above form, by the officers of the meeting.

NUMBER 5.

Form for Certificate of Tax Voted by Subdistrict Meeting.

[Sections 1718, 1778.]

To,
Secretary of the board of directors of the district township of

I hereby certify that the electors of subdistrict No., of the district township of, in the county of, and state of Iowa, at the annual meeting, held on the first Monday in March, 188..., voted a tax of dollars for the erection of a school-house in said subdistrict.

.....,
Subdirector.

NOTE.—This certificate may be made either by the subdirector or by the chairman and secretary of the subdistrict meeting.

NUMBER 6.

*Form of Certificate for Election of the Officers of the
Board, to the County Superintendent, Auditor,
and Treasurer.*

[Section 1736.]

I hereby certify that at a meeting of the board of directors of the district township of....., held on theday of....., 188.., the following named officers were elected and have duly qualified according to law:

.....to the office of....., P. O. Address,.....

.....to the office of....., P. O. Address,.....

Dated at....., 188..

.....,
Secretary.

NOTE.—All the officers of the board, in addition to the oath which they may have taken as members, must take the oath of office as prescribed by section 5, article 11, of the constitution.

NUMBER 7.

Form for Notice of District Township Meeting.

[Section 1742.]

Notice is hereby given to the qualified electors of the district township of....., in the county of....., and state of Iowa, that the annual meeting of said district will be held at....., on the second Monday in March, 188.., at..... o'clock.....M., for the transaction of such business as may legally come before it.

.....,
Secretary.

Dated....., 188..

NOTES. (a) The above notice must be posted in five different conspicuous places in the district and a copy of the same furnished to the teacher of each school in session to be read to the pupils thereof. In independent districts, insert immediately

after the word "for" in the concluding part of the notice, the words "the election of officers and" in accordance with the provisions of sections 1807, and 1808.

(b) The same notice may be given for the extra meetings provided for in sections 1717 $\frac{1}{2}$ and 1833, changing the time of holding the election to suit the circumstances of the case.

NUMBER 8.

Form for the Treasurer's Account with the Teachers' Fund.

[Sections 1747, 1748.]

-----, TREASURER, in account with Teachers' Fund. Dr.

Sept. 28, 188..	To cash received of County Treasurer, semi-annual apportionment.....	\$270 00
Oct. 5, 188..	To cash received of County Treasurer district tax.....	75 00
Jan. 4, 188..	To cash received of County Treasurer, district tax.....	150 00
April 5, 188..	To cash received of County Treasurer, district tax.....	197 00
April 5, 188..	To cash received of County Treasurer, semi-annual apportionment.....	135 00
July 5, 188..	To cash received of County Treasurer, district tax.....	100 00

-----, TREASURER, in account with Teachers' Fund. Cr.

Oct. 13, 188..	By cash paid James Hogan, on order No. 1.....	\$136 00
Oct. 13, 188..	By cash paid Sarah Smith, on order No. 3.....	89 00
Nov. 14, 188..	By cash paid Nicholas Hoover, on order No. 4.....	135 00
May 3, 188..	By cash paid Louisa Martin, on order No. 7.....	82 00
May 4, 188..	By cash paid Jas. M. Higgins, on order No. 10.....	115 00
May 4, 188..	By cash paid Stephen Phelps, on order No. 11.....	175 00
May 5, 188..	By cash paid Amelia Mason, on order No 13.....	95 00

NOTE.—A similar account is to be kept with the school-house fund and contingent fund, and a statement of the condition of any fund is to be rendered at any time when required by the board. By keeping a correct account of the orders, as per Form No. 16, the treasurer will know the amount outstanding, and can readily determine what per cent on each he can pay with the funds on hand.

The above form is intended for separate pages opposite each other.

NUMBER 9.

Form of Contract between Subdirector (or Secretary), and Teacher.

[Sections 1753, 1757, 1758.]

This contract, between....., of.....
county, Iowa, and....., subdirector of
subdistrict No., of the district township of.....,
in the county of....., and State of Iowa witnesseth:

That the said..... agrees to teach the public
school in said subdistrict for the term of..... weeks, com-
mencing on the..... day of....., 188., and
well and faithfully to perform the duties of teacher in said school,
according to law, and the rules legally established for the govern-
ment thereof, including the exercise of due diligence in the
preservation of school buildings, grounds, furniture, apparatus,
and other school property.

In consideration of said services, the said....., as
subdirector aforesaid, in behalf of said district township, agrees
to pay the said..... the sum of.....
dollars per school month, at the end of.....,
and to perform all the duties required by law as such subdirector.

Witness our hands this..... day of.....,
A. D. 188..

.....,
Teacher.

.....,
Subdirector.

The within contract is hereby approved this..... day of
....., 188..

.....,
President.

NOTE.—With a little variation the above form will answer for independent districts. The subdirector should file the contract with the president and secure his approval before the teacher enters upon his duties. The president cannot withhold his approval, unless there has been a violation of law or the instructions of the board have been disregarded.

NUMBER 10.

Form for Teacher's Term Report to District Secretary.

Teacher's report to the district secretary of the school taught in subdistrict No., of the district township of, county, Iowa, for the term commencing 188..:

	MALES.	FEMALES.	TOTAL.
Whole number of pupils enrolled
Average number belonging
Total attendance in days
Average daily attendance
Total number of days absent
Number of cases of tardiness
Number neither absent nor tardy
Number of pupils studying orthography
Number of pupils studying reading
Number of pupils studying writing
Number of pupils studying arithmetic
Number of pupils studying geography
Number of pupils studying grammar
Number of pupils studying physiology
Number of pupils studying United States history

Whole number of days taught,

Compensation of teacher per month, \$.....

Average cost of tuition per month, for each pupil, \$.....

I hereby certify that the above report is correct.

.....
Teacher.

NOTES. (a) The *number belonging* on any day is equal to the number enrolled less the number who have been absent more than three consecutive whole days. To obtain the *average number belonging* for the term—divide the sum of the numbers belonging for each day by the number of days the school has been taught.

(b) To find the *average daily attendance*—divide the total attendance in days by the number of days the school has been taught.

(c) To find the *average cost of tuition for each pupil per month*—divide the amount paid the teacher per month by the average daily attendance for the term.

The above form will also serve for a monthly report to the county superintendant, in case he requests it.

NUMBER 11.

Form for Revocation of Teachers' Certificate.

[Section 1771.]

OFFICE OF COUNTY SUPERINTENDENT,

..... county,, 188..

To the Boards of School Directors in the county of
and State of Iowa:

WHEREAS, On the day of, 188.., a certificate was issued, authorizing to teach in the public schools of this county; and,

WHEREAS, Upon due examination, of which the said received personal notice, and was permitted to be present and make defense, it appeared that the said, in consequence of (*here state the offense—gross immorality, for example*), is unworthy longer to retain the same.

Now, therefore, in pursuance of the provisions of section 1771 of the school laws of the state of Iowa, the said certificate is hereby revoked, to take effect from and after the date hereof.

.....,

County Superintendent.

NOTE.—A copy of the above revocation should be transmitted to the secretary of each district, and the secretary should immediately notify each subdirector in his district of the fact. The teacher should also be served with a copy.

NUMBER 12.

*Form for Certificate to the Board of Supervisors of
the Tax Determined by the Board of Directors.*

[Section 1777.]

....., 188..

To the Board of Supervisors of county, Iowa :

I hereby certify that a tax of dollars was this day determined by the board of directors of the district township of, in the county of, and state of Iowa, for the contingent fund, and dollars for the teachers' fund, as provided in section 1777 of the Code.

.....,
Secretary.

NUMBER 13.

*Form of Notice Permitting the Attendance of Pupils
from Adjoining Districts.*

[Section 1793.]

To, Secretary of the Board of Directors of
the District Township of

Notice is hereby given that, and
....., pupils residing in the district township of
....., have been granted permission by the board
and county superintendent to attend school in subdistrict No.
....., in the district township of, commencing
on the day of, 188.., for a term of
..... months.

-Dated at,

....., 188..

.....,
Secretary.

NOTE.—By Chapter 41, Laws of 1878, when the boards of district townships cannot agree on the attendance of scholars in adjoining districts, they may attend, if the other conditions of the law are fulfilled, by permission of the board where they wish to attend, and the consent of the county superintendent of the county where they reside, and tuition can be collected **only from** date of the official notice.

Form for Affidavit of Appeal.

[Section 1830.]

STATE OF IOWA, } ss.
----- county. }

----- }
V.
DISTRICT TOWNSHIP OF ----- }

I, _____, being duly sworn, on oath say: that on the _____ day of _____, A. D. 188_, the board of directors of said district township rendered a decision (or made an order), whereby (*here state facts showing affiant's interest in the decision, and the injury to that interest*); that said board, in rendering the decision (or making the order) aforesaid, committed errors, as follows: (*Here state the errors charged.*)

Subscribed and sworn to by before me,
this day of, A. D. 188..

.....;

.....

Form for Notice of Appeal.

[Section 1832.]

STATE OF IOWA, } ss.
----- county. }

V.

DISTRICT TOWNSHIP OF _____

To _____,

Secretary of the Board of Directors of the District Township of _____;

You are hereby notified that _____ has filed in my office an affidavit alleging that said board of directors, on the _____ day of _____, A. D. 188_, made a decision (or an order) whereby (here describe the decision or order, so that the secretary may identify it), and claiming an appeal therefrom. You are therefore required, within ten days after receiving this notice, to file in my office at _____, in said county.

a complete transcript of the record of the proceedings of the board relating to said order, together with copies of all papers filed with you, pertaining to said action appealed from.

Dated at _____,
_____, 188..

_____,
County Superintendent.

NUMBER 16.

Form of Certificate to District Secretary's Transcript.

[Section 1832.]

I, _____, secretary of the board of directors of the district township of _____, in the county of _____, Iowa, hereby certify that the foregoing is a correct and complete transcript of the record of all proceedings of the board, and of all papers filed, relating to the case _____ v. _____

Dated at _____,
_____, 188..

_____,
Secretary.

NOTE.—The secretary's transcript will contain:

1. A copy of all that portion of the records of the proceedings of the meeting relating to the action appealed from, with the date of the meeting.

2. A copy of each petition, remonstrance, plat, or other paper relating to said action, submitted to the board, to which will be annexed the above certificate.

NUMBER 17.

Form for Notice of Hearing of Appeal.

[Section 1833.]

STATE OF IOWA, }
_____ county. } ss.

v. }
DISTRICT TOWNSHIP OF _____ }
To _____:

You are hereby notified that there is on file in this office a

transcript of the proceedings of the board of directors of the district township of _____, at a meeting held on the _____ day of _____, 188____, in relation to (*here describe the decision or order appealed from*), from which appeal has been taken; and that the said appeal will be heard before me at _____, in said county, on the _____ day of _____, 188____, at _____ o'clock, ____ m.

Dated at _____,

_____, 188__

_____,

County Superintendent.

NOTE.—The appellant, the president and secretary of the board, and other parties known to be interested, should receive a copy of this notice.

NUMBER 18.

Form of Certificate to the County Superintendent's Transcript.

[Sections 1832, 1835.]

I, _____, superintendent of _____ county, Iowa, hereby certify that the foregoing is a correct and complete transcript of the records of all proceedings had, evidence given, and papers filed in my office, and my rulings thereon; also of my decision in the case _____ v. _____

Dated at _____,

_____, 188__

_____,

County Superintendent.

NOTES.—(a) The date of filing every paper should be endorsed thereon; also, in the case of motions, all orders and rulings of the county superintendent. All oral motions and evidence should be reduced to writing.

(b) The *transcript* of the county superintendent will consist of a literal copy of every paper filed, and all endorsements thereon, together with a copy of all evidence given; the whole arranged in chronological order, closing with the decision of the county superintendent in full, with the above certificate annexed. See notes (c) and (d) to section 1834.



PART VII.

APPENDIX.

*Recent School Law Decisions, Compiled by Lyndon
A. Smith, A. B., L. L. M.*

LICENSE PRE-REQUISITE TO A VALID CONTRACT.

SECTION 1. A contract to employ a person to teach who has not a certificate or license is void in Illinois, Indiana, and Minnesota; and procuring a certificate after entering into such an agreement does not render it a valid contract. In Ohio it has been decided that a statutory provision similar to the one prohibiting the employment of unlicensed teachers in the States above mentioned does not render invalid a contract of employment entered into with a teacher before he obtains a certificate, provided he obtains it before commencing to teach. The court said: "The law forbids the *employment* of a teacher who has not a certificate. The teacher is not 'employed,' within the meaning and intent of this provision, until he engages in the discharge of his duties as teacher. The mischief intended to be guarded against was the teaching of a school by an incompetent person, and not the making of the contract by an incompetent person." In Vermont, if a person commences teaching without a certificate and continues to teach after obtaining one, he is considered to have made a new contract, commencing at the time when the certificate was obtained and having the same terms as the one under which teaching was begun. In Minnesota a person commenced teaching under a verbal contract. He taught three weeks, then

obtained a certificate and made a written contract to run three months from the time he commenced teaching. It was held that he was entitled to wages at the stipulated rate after the certificate was obtained and the written contract made, and to no remuneration for the previous three weeks. In an Illinois case a certificate was not obtained until the middle of the term. A new contract was entered into at that time to pay the teacher double wages for the remainder of the term. This was considered an attempt to do indirectly what there was no power to do directly; and therefore the contract was held void, as was the original contract.

CONTRACTS.

SECTION 2. A contract is to be construed in reference to contemporaneous laws and usages. For example, in Michigan the law directs that a contract of hiring to teach "shall require the teacher to keep a correct list of the pupils and the age of each attending the school, and the number of days each pupil is present, and to furnish the director with a correct copy of the same at the close of the school" The court thought that it could not be doubted these requirements, though not mentioned in his contract, imposed upon the teacher of every public district school the duty of compliance with them, and that they become a part of a teacher's contract, whether inserted in it or not. The contract of a teacher is for his own personal services. The nature and quality of those services were admirably described by Judge Worden in an Indiana case. In giving the opinion of the court, he said: "A teacher doubtless, like a lawyer, surgeon, or physician, when he undertakes an employment, impliedly agrees that he will bestow upon the service a reasonable degree of learning, skill, and care. When he accepts an employment as teacher in any given school, he agrees by

implication that he has the learning necessary to enable him to teach the branches that are to be taught therein, as well as that he has the capacity in a reasonable degree of imparting that learning to others. He agrees, also, that he will exercise a reasonable degree of care and diligence in the advancement of his pupils in their studies, in preserving harmony, order, and discipline in the school, and that he will, himself, conform, as near as may be, to such reasonable rules and regulations as may be established by competent authority for the government of the school. He also agrees, as we think, by a necessary implication, that while he continues in such employment his moral conduct shall be in all respects exemplary and beyond just reproach."

The hiring of a substitute by a teacher under any ordinary circumstances is a breach of contract, though the competency of the substitute is unquestioned. A teacher may not ordinarily absent himself by leave of individual members of a school board.

SAME.

SECTION 3. A teacher's contract is oftentimes binding upon a district though it is irregular in some respect, as when it was made with part of a board or was verbally made with a subcommittee instructed by the board to employ a teacher. The law implies a contract from the doing and accepting of work, and a district can not, on the ground that he has not complied with the law requiring a written contract, have the benefit of a teacher's services without remunerating him. Where there is a written contract it cannot be orally contradicted. A contract with a township board to teach in a subdistrict over which a lower court has decided that the board has control, is not invalidated by the reversal of that decision by the supreme court. Contracts with *de facto* officers

are binding upon the body they represent; but contracts entered into with a number of persons acting as a board are not binding upon the school district when there is in existence at the same time another acting board who are so *de jure* and who have notified the persons contracting with the other board not to carry out their contracts. Which of the boards is such of right is a question for the courts to decide. The part performance of an oral contract, in a case where the law requires a written one, is a ratification of it and renders a district liable for any breach of it. There is no contract, express or implied, between a teacher and a pupil, and, in the absence of trespass, the latter cannot sue the former for refusing to hear his recitations. The teacher's contract is with the directors alone. A minor who possesses the essential qualifications in regard to moral character, learning, and ability, and who has obtained the requisite certificate, may, with the assent of his parents, enter into a valid contract to teach school. A father is charged with certain duties as respects his child, as education, support, and protection, and, as some compensation for these duties, he has the right to claim the earnings of his child in the absence of proof of relinquishment.

RECOVERY OF WAGES. WHEN IMPOSSIBLE.

SECTION 4. A teacher cannot recover for services rendered after the appropriation out of which payment of them must be made is exhausted when the law of the place "is clear that no contract or debt can be created without the authority of the councils and an appropriation to meet it." Wages cannot be recovered on a void contract. In Iowa a contract must be approved by the president of the school board; and where he refused to do so a teacher was not allowed to recover although she proceeded to teach under control of the subdirector

hiring her and completed her term of instruction. If a teacher is discharged on the ground of incompetency he must use all proper means for his vindication and reinstatement before the courts will entertain a suit for the recovery of wages. Then the question of competency will be one for the jury. Of course he cannot recover if found incompetent; for, "if a teacher, although he has been employed for a definite length of time, proves to be incompetent and unable to teach the branches of instruction he has been employed to teach, either from a lack of learning or from an utter want of capacity to impart his learning to others, or if in any other respect he fails to perform the obligations resting upon him as such teacher, whether arising from the express terms of his contract or by necessary implication, he has broken the agreement on his part." For teaching done in defiance of a decision of removal no right whatever accrues to compensation out of the public fund. In a Mississippi case a teacher recovered wages for services rendered after the revocation of his license by the county superintendent in opposition to the wishes of the contracting board of trustees, the court saying that "after the vacation of the certificate the relator was not competent to make a new engagement to teach, but could continue to execute an existing contract, unless the local trustees co-operated with the superintendent to vacate the contract."

SAME.

SECTION 5. The failure to make required reports destroys the right to recover wages, and a statute requiring teachers to make specified entries in a register applies to a principal of a number of schools, although he has done no actual teaching. If the omission of entries is through no fault of the teacher, it will not prevent the recovery of wages. This rule was stated as follows in a case in

which a teacher did not complete her school and made none of the entries required by statute to be made at the close of a school: "i he close of school there meant must be the close of the term of school; for the answers to the inquiries required to be entered relate to the whole term, and could not be answered till the close of it. If the school stopped before the close of the term through the fault of the teacher, then the plaintiff would not be entitled to recovery, whether she made the necessary entries in the register or not; but if the prudential committee, by his own conduct, without her fault, prevented the close of the term being reached by her, so she could make the enteries, then the want of them would not prevent the recovery of the wages."

SAME. WHEN POSSIBLE.

SECTION 6. A teacher can recover wages for services rendered while he holds a certificate irregularly given. The certificate is in the nature of a commission, and cannot be attacked collaterally, though it does not correspond to the form in which the statute says it *may* be drawn and was given without an examination of the candidate.

In a Nebraska case a teacher was without a certificate three months during a term of nine months and recovered wages "It is true," said the court, "that the statute prohibits the school board from paying from the school fund any but qualified teachers and makes a certificate or diploma, issued in the manner directed, the only evidence of such qualification. The prohibition of the statute is, however, upon the district board and not upon the teacher."

If a teacher lawfully employed is dismissed without just cause, he may recover wages for the whole time for which he was employed. The court in Wisconsin laid

down the rule as follows: "Unless the discharge of the teacher be justified by proof of the fact that he is not properly performing his contract on his part, the district becomes liable to the teacher for such damages as he may sustain by such discharge in the loss of wages for the residue of his term." Where a teacher was kept from rendering services by the burning of the school-house, but was ready to teach whenever a place should be provided and filled out her register at the end of the time specified, it was held that full wages could be recovered.

SAME.

SECTION 7. A teacher can recover wages for the time included in legal holidays. Chief Justice Campbell, of Michigan, said in a recent case: In regard to deductions for holidays we are of opinion that school management should always conform to those decent usages which recognize the propriety of omitting to hold public exercises on recognized holidays, and that it is not lawful to impose forfeitures or deductions for such proper suspension of labor. Schools should conform to what may fairly be expected of all institutions in civilized communities. All contracts for teaching during periods mentioned must be construed of necessity as subject to such days of vacation, and public policy : s well as usage requires that there should be no penalty laid on such observances." If a teacher is employed for a definite time, and during the period of his employment the district officers close the schools on account of the prevalence of contagious disease, and keep them closed for a time, the teacher continuing ready to perform his contract, he is entitled to full wages during such period. Wages have been recovered by a teacher who stipulated in the contract of employment that she would not instruct certain children in the district, and by a teacher who was

obliged to give up her school because the committee insisted on her allowing a disobedient and unmanageable boy to attend. The court said: "The teacher could not perform the duties of her employment without maintaining proper and necessary discipline in the school, and when all her other means for doing so failed in respect to the boy it was her right, and might be her duty, to expel him, to save the rest of the school from being injured by his presence. It was not the duty of the teacher, under the contract, to teach the school without maintaining proper and necessary discipline in it; and if the committee insisted that she should have the boy there, when she could not have him there and have the discipline too, it was equivalent to insisting that she should teach the school without the discipline, which she was not bound to do."

DISMISSAL.

SECTION 8. If a teacher in a public school, although employed for a definite time, fails to perform the obligations resting upon him, he has broken the agreement on his part, and the trustees are clearly authorized to dismiss him from such employment. When the school law empowers a city board of education to employ teachers and *remove them at pleasure*, the provision enters into and forms a part of the contract with a teacher for his services for a specified period; he may be discharged before its expiration, notwithstanding the terms of the employment. But where the power of discharge is limited it ought not to be exercised until notice has been given the teacher and proper testimony heard against him. If, at a hearing, he does not object to the sufficiency of the notice, he will not be allowed to do so afterward. It has been held, generally, that the power to discharge teachers could not be enlarged by stipulations introduced into the

contract of hiring. A school board in Wisconsin included in such a contract the clause "We reserve the right to close the school at any time if not satisfactory to us." The court, in commenting on it said: "We think the good order and usefulness of the schools would be greatly prejudiced by holding that the boards had such power. If the power claimed for the board in this case exists and may be enforced, then the public schools must be taught to suit the whims, caprices, and peculiar notions of the hiring board, and not as the teacher, in the conscientious discharge of his duty, should teach the same."

SAME.

SECTION 9. In New York the State superintendent has general supervision and direction of the normal schools, and it is one of his discretionary duties to approve the hiring of teachers for them. It has been decided that these powers do not authorize him to qualify his approval with the words "To continue in force during the pleasure of the board and the superintendent;" for "it is not within the power of the superintendent, by annexing conditions to his approval of the employment, to change the law regulating the discharge of the teachers of these schools."

In Kansas a school district board employed a school teacher, and the contract of employment contained, among others, a stipulation that, if by the inability or neglect of the said A (the teacher) the interests of the school shall suffer, the district board shall have full power to annul this contract after one month's written notice. The court, the chief justice dissenting, held that the stipulation was valid, notwithstanding a clause in the school law providing that the district board in conjunction with the county superintendent may dismiss a teacher for incompetency, cruelty, negligence, or immor-

ality, and that under the contract the school district board might alone, without any formal trial, and not in conjunction with the county superintendent, dismiss the teacher for incompetence and negligence from which the interests of the school suffer. "The object of the statutes," says the court, "was simply to provide that the school district should not so bind itself by contract that a school teacher could not be discharged at any time by the school board acting in conjunction with the county superintendent, for incompetency, cruelty, negligence, or immorality; and it was not intended to prohibit the school board from making other provisions for the discharge of an incompetent, cruel, negligent, or immoral teacher."

COMPLAINTS AGAINST CANDIDATES FOR TEACHERS

POSITIONS.

SECTION 10. A communication made by persons interested in a particular school to the superintendent having jurisdiction over it for the sole purpose of preventing him from issuing a license to teach the school to a particular individual on the ground that he was of bad moral character and wholly unfit to teach and have the care of a district school, is a privileged communication, and was abundantly justified by proof that he was an habitual blasphemer and profane person and an open violator of the Sabbath. The court said: We do not think any superintendent would need vindication for being dissatisfied with the moral character of a teacher who has the faults complained of by these parties who opposed the licensing of plaintiff. A superintendent who should subject young children to such influences would be very censurable." The right to remonstrate must not be made the means of gratifying malice and enmity,

and inquiry may be made as to the motives and private purposes of petitioners.

STUDIES.

SECTION 11. The principal questions under this head which have been before the courts recently are how far a parent can control the studies of his child and whether "other branches," mentioned in a statute after an enumeration of English studies, would include German. The court answered the latter question affirmatively, taking judicial notice of the practice and policy of the State to allow the study of German and of the omission of the legislature to prohibit the instruction of pupils in that language. The former question has been answered in two States, Illinois and Wisconsin. In Illinois the court said: "No parent has the right to demand that the interests of the children of others shall be sacrificed for the interests of his child; and he cannot, consequently, insist that his child shall be placed or kept in particular classes, when by so doing others will be retarded in the advancement they would otherwise make; or that his child shall be taught studies not in the prescribed course of the school or be allowed to use a text book different from that decided to be used in the school, or that he shall be allowed to adopt methods of study that interfere with others in their study. * * * The policy of our law has ever been to recognize the right of the parent to determine to what extent his child shall be educated during minority, presuming that his natural affections and superior opportunities of knowing the physical and mental capabilities and future prospects of his child will insure the adoption of that course which will most effectually promote the child's welfare. The policy of the school law is only to withdraw from the parent the right to select the branches to be studied by the child to the

extent that the exercise of that right would interfere with the system of instruction prescribed for the school, and its efficiency in imparting education to all entitled to share in its benefits. No particular branch of study is compulsory upon those who attend school." In Wisconsin the court said: "Now, we can see no reason whatever for denying to the father the right to direct what studies, included in the prescribed course, his child shall take. He is as likely to know the health, temperament, aptitudes, and deficiencies of his child as the teacher, and how long he can send him to school. All these matters ought to be considered in determining the question what particular studies the child should pursue at a given term."

CORPORAL PUNISHMENT.

SECTION 12. In the absence of statutory enactments, the authorities upon the right of a teacher to inflict reasonable chastisement upon a pupil are not numerous, but they are sufficient to prove its existence. The law is well settled that the teacher has the right to exact from his pupils obedience to his lawful and reasonable commands, and to punish disobedience, with kindness, prudence, and propriety." Any punishment with a rod which leaves marks and welts on the person of the pupil for two months afterward, or much less time, is immoderate and excessive. Proof that the punishment was for an insufficient cause or in an unreasonable manner will be received to rebut the presumption to the contrary. In no case can the punishment be justifiable unless it is inflicted for some definite offence which the pupil has committed and the pupil is given to understand why he is punished. "Punishment inflicted when the reason of it is unknown to the punished is subversive, and not promotive, of the true objects of punishment." It must not be inflicted

for obedience to the lawful directions of a parent. The authority to chastise extends to a pupil who has attained his majority; for by voluntarily attending school he waives any privilege and submits himself to like discipline with those that are within school age. A member of a school committee may eject a pupil from the school-house for insulting conduct toward him. This was decided in a Connecticut case, stated by the judge in his opinion, as follows: "The defendant, being at the school-house performing certain duties connected with the school, called the attention of the plaintiff to certain acts, not especially culpable in character, which he acknowledged he had committed. His bearing and manner were insolent and offensive, and the language in which he indulged was grossly profane. Such language, reprehensible at all times, should not have been allowed to pass with impunity from a school boy of the older class, within the walls of a school-house, in the presence and hearing of younger pupils. After being told to leave, he so conducted that it was proper to remove him, no unnecessary force being used to attain that object."

INSURANCE, REPAIR, AND FURNISHING OF
SCHOOL HOUSES.

SECTION 13. A provision that a school officer shall have the control and management of the school-house does not empower him to bind the district by a contract of insurance, nor to purchase lightning rods. A district can obtain the insurance on a school-house burned, although it had been nominally sold on credit by officers authorized to sell, because such sale on credit was void without ratification by the district. If a house be burned the insurance money cannot be obtained by the creditors by garnishment; for the property of a school district cannot be garnished, nor subjected to a mechanics' lien.

Neither a stereoscope with views nor charts containing the multiplication tables, forms for business contracts, and prominent historical events, are "necessary appendages" to a school-house. A board authorized to purchase school apparatus may buy an organ for a school in which music is taught as a recognized branch of education. Seats may be bought under a resolution directing a board to "fix the school-house ready for the winter term." The mere fact that seats, maps, globes, etc., have been used by the district does not ratify an illegal purchase and bind the district for payment. A statute providing that a director shall keep the necessary school-house furniture in proper order, and that his expenses shall be subsequently audited and paid, does not intend that money shall be put into his hands previous to such auditing.

QUASI-JUDICIAL POWERS OF OFFICERS.

SECTION 14. School officers are usually possessed of specially defined powers and should exercise no others, except such as arise by fair implication from those granted. In many States certain school officers are clothed with authority to decide controversies and hear appeals. An appeal is not a suit; and a statute providing for the employment of counsel in case of suits by or against a district does not warrant such employment in case of a hearing before a county or State superintendent. The hearing of an appeal and the decision of controversies and disputes arising under the school law are exercises of "a visitatorial power of the most comprehensive character." The decisions of an officer or board clothed with such power are entitled to great weight with the courts and are of value in construing the school law when it admits of different constructions. In Maryland they are summary and conclusive. The manner of cou-

ducting the hearing of cases by school officers may be determined by them in the absence of statutory regulation. A superintendent may require evidence to be submitted in the form of affidavits and the arguments of parties or counsel to be in writing, and may refuse a personal hearing of witnesses and an oral examination of them before him. A board of education need not require testimony to be given under oath. "The delicate nature of the duty devolved upon the trustees," said Judge Noah Davis, of New York, in a case involving the discharge of a teacher, "to see to it that unfit or incompetent persons are not put or kept in charge of the children who attend the common schools forbids the idea of a trial with the formality and strictness that belong to courts. It is only necessary to suggest that they must often act upon moral convictions rather than established facts, and upon evidence of unfitness, physical, mental, or moral, that would not in courts be such proof as would justify a verdict of guilt of specific offences or immoralities." If an appeal is taken under a statute, the party appealing waives those questions which require a judicial review and submits himself to the discretion of the appellate body. The wisdom of intrusting school controversies to school officers has been approved in several of the opinions cited, as will be seen by the following brief quotations: "We are satisfied that this supervision of the State superintendent over the affairs of schools and school districts, commonly very fruitful sources of litigation, has been most wisely conferred upon him for the public interest, as well as for the peace and prosperity of the schools and districts themselves." "If every dispute or contention among those intrusted with the administration of the system, or between the functionaries and the patrons or pupils of the schools, offered an occasion for a resort to

the courts for settlement, the working of the system would not only be greatly embarrassed and obstructed, but such contentions before the courts would necessarily be attended with great costs and delay, and likely generate such intestine heats and divisions as would, in a great degree, counteract the benevolent purposes of the law." "A quarrel or a lawsuit in a school district is generally not long confined to the original parties. It spreads among all the families, it goes into the selection of teachers, and injures the discipline of the schools; and if the difficulty once takes the shape of a lawsuit, and the parties have expended money as well as temper upon it, it is still more difficult to settle. Hence the provision for a cheap and speedy decision avoiding the delay and expense of a lawsuit."

SAME. LIMITATION OF APPEALS.

SECTION 15. A clause in the code of Iowa provides that "any person aggrieved by any decision of, or order of the district board of directors, in matter of law or fact, may, within thirty days after the rendition of such decision or the making of such order, appeal therefrom to the county superintendent." The directors of the independent school district of West Des Moines had made a rule that scholars guilty of defacing or injuring school property should not be allowed to attend school until payment of damages or adjustment of the case. A child accidentally broke a glass in a window. Neither he nor his parents paid for it. Consequently the child was refused admittance. The case was brought before the courts, and the question of jurisdiction considered. Three judges of the supreme court believed that it had jurisdiction; two, one of them the chief justice, dissented. Rothrock, J., in dissenting, said: "It seems to me that this is a case where the remedy by

appeal is peculiarly appropriate. The controversy is one concerning the proper government of the school, and it should be determined by the tribunal appointed by law to settle such questions. If resort can be had to the courts without first appealing to the county superintendent, and from him to the State superintendent, the law allowing an appeal becomes a dead letter and wholly useless and inoperative." The majority decided that the subjects of appeal are limited. Beck, J., giving the opinion, said: "It cannot be held that decisions and orders refusing the allowance and payment of claims against the district, or construing contracts, or effecting the possession of or right to property, when the interest of a citizen is affected thereby, may not be questioned except upon appeal. * * * It was certainly never the intention of the legislature to confer upon school boards, superintendents of schools, or other officers discharging judicial functions exclusive authority to decide questions pertaining to their jurisdiction and the extent of their power. All such questions may be determined by the courts of the State. Hence, when the rights of a citizen are involved in the exercise of authority by a school officer the courts may determine whether such authority was lawfully exercised."

DIRECTORS, TRUSTEES, ETC. ORGANIZATION.

SECTION 16. The first business of a school board composed of continuing and newly elected members is to organize. This is best accomplished ordinarily by effecting a temporary organization whereupon the returns of the election are read or the certificates of the directors elect are presented; and thus all the members participate in the permanent organization. If a permanent organization cannot be accomplished, however, because no one of the members can obtain a majority of votes for president,

it is such neglect of duty as will justify the proper court to declare the seats of the directors vacant and appoint others in their stead. The official functions of newly elected members attach when the full term of their predecessors has expired; they are then entitled to meet with the continuing members and participate in both the temporary and permanent organization of the board. When a board is clothed with authority to decide upon all questions relative to the qualifications, elections, and returns of its members, its decision that a person is not entitled to a seat as a member is final; and a statement of the reasons, upon its records, cannot confer on the courts any authority to consider a question which the legislature has made it the duty of the school board to decide finally and without appeal. A member appointed to fill a vacancy until the next election, "when such vacancy shall be filled by electing a person from the district in which the vacancy occurs to supply the same," does not hold his office till the time ordinary directors chosen at that election would begin to act, but his official relations cease with the occurrence of the election. A member appointed to serve until the municipal election next ensuing and the election and qualification of his successor, continues in office notwithstanding an illegal election of a successor. An unaccepted resignation does not create a vacancy. It is the right and duty of a member to act until the acceptance of his resignation.

SAME. REQUISITES TO VALID ACTION.

SECTION 17. "Trustees can act only in pursuance of law; they cannot be compelled to act unless the law is complied with in every substantial particular, nor are they permitted to act until it is so complied with. They have no power to waive anything that is necessary to compel their action. They may not as a matter of grace or favor

take territory from one district and add it to another. They may do this (and similar acts) only in the cases provided by law; and whatever is essential to be done before they are bound to act, they must require before they do act." If a board of education is made a body corporate, individual members, acting separately, although a majority, cannot contract a debt nor direct the issuance of an order to pay it. The president and secretary cannot act for the board and without its concurrence in matters of contract. The concurrence of a majority when duly assembled is required to constitute a valid act; the instruction of the court below to the jury, that, "If you find from the evidence that two of the (three) subdirectors * * * told the plaintiff that she could continue to teach the school under the contract, and that they would call a meeting to approve the same, this would be a ratification of said contract, and the defendant (district) would be bound thereby," has been declared an error. In New Jersey it is one of the duties of incorporated trustees to employ teachers; and, in commenting upon it, the court said: "The duty of these trustees, in the selection of teachers, was not ministerial merely; they were obliged to examine into the qualifications of teachers and to exercise judgment and discretion in their selection; it was the performance of an important public duty, in the execution of which conference and comparison of judgments were necessary in reaching proper results. It was an act judicial in its nature, and the rule governing such bodies so acting is, unless special provision of law is otherwise made, that all must meet, or have notice to meet, when official action is intended." The action of a majority of a school board will not bind the district when other members of the board had no notice of the action and did not participate in it.

SAME.

SECTION 18. A majority of the votes cast will not be construed a majority of those present. If all members have had due notice, a majority of those present can legally authorize or perform an act, and a contract made by two of three members of a committee, where the third member either authorized them beforehand to make it or consented to it afterward, is valid. It was held in the last case cited that it was correct to instruct a jury that the contract of two members of a committee would be valid "if the third member was notified and requested to act and authorized the others to act without him; that there was no necessity of the committee assembling in a formal meeting at any particular place; that they were not a board, with a clerk, having stated times and places of meeting; and that, if they all consented to and had knowledge of the acts of the majority, that was sufficient even if the third member had no notice to be present at the time the contract was executed." The proceedings of school boards will not be treated as void and set aside in collateral proceedings for mere irregularities which do not affect the substantial rights of parties. In a Missouri case the court said: "There is no doubt that the action of the township board was irregular; but if all of their proceedings which are had in good faith can be set aside and treated as void in collateral proceedings for irregularities which do not affect the substantial rights of the parties interested, the whole beneficial objects of our school system will be paralyzed and rendered inefficient. The schools must necessarily in many townships be conducted by men not accustomed to legal certainty and forms, and their action should be upheld when good faith has been exercised unless it is in very glaring cases of

wrong or where direct proceedings are instituted at the time to set their action aside."

SAME. POWER TO EMPLOY AND DISMISS TEACHERS.

SECTION 19. A board of school directors, though a corporation, is possessed of certain specially defined powers, and can exercise no others, except such as result by fair implication from the powers granted. A board of education cannot delegate its powers. This was decided in interpreting an Ohio provision "that in each township district the local directors shall employ teachers of the schools in the subdistrict in which they reside," "have power to fix the salary or pay of said teachers," and "shall certify the amount due any teacher for services to the township clerk," etc. The court said: "The local directors of a township school district are not authorized to permit any person to teach or assist in teaching a public school under their control unless employed by them for that purpose. They have no power to delegate the employment of teachers for such schools to any other person or persons, nor to provide for the payment of a teacher thereof, in any other manner than that pointed out." A board authorized to establish and maintain a graded system has power to appoint a superintendent of schools if his services are needed. If a board is empowered to hire teachers and is given the general care of the affairs of a school or a district, it has by implication the right to dismiss a teacher for good cause, not otherwise. Whether boards or committees can make a contract with a teacher for a longer time than to the end of their term of office has been generally decided in favor of such a contract. In a Connecticut case the court said: "It would be a novel and most mischievous doctrine that the officers who manage the governmental corporations of the State could have no power to make

a contract which was not to be performed within the time for which they were elected to office." The court, in a New York case, said: "To limit the right to employ a teacher for a time not beyond the incumbent's term of office would lead at times to great embarrassments and deprive the district of the opportunity to receive the services of desirable teachers. An indiscreet or corrupt officer may impose on the district, it is true. The inhabitants of a district and patrons of the school must confide this power somewhere, and their protection is in selecting competent and honorable officers." In the case from which this quotation is taken a sole trustee hired a teacher for a school year commencing six days after the expiration of his term of office, and the contract was sustained. In Illinois a similar contract was not sustained, the court saying: "There is doubtless no objection to contracts for the teaching of terms extending for a reasonable time beyond the current school year when such contracts are entered into in good faith, and not for the purpose merely of forcing upon the district an unsatisfactory teacher or defeating the will of the voters at the annual election. But we think the spirit and intent of the law are clearly repugnant to the idea that one board of directors may, by contracts wholly to be carried out in the future, divest future boards of directors of the power to select the teachers they shall desire for the terms to be commenced after their organization." In Pennsylvania and Missouri it has been said that a contract for the employment of teachers should not extend beyond the current year.

SAME. POWER TO REPAIR, EXPEND MONEY, ETC.

SECTION 20. A board can bind a school district by a contract for repairs to a school-house, and that notwithstanding a given sum was voted at the annual meeting

for specified repairs and had been so expended; the direction that "the district board shall have the care and keeping of the school-house," the court said, "may not imply the right to re-model or improve, but it implies the right to do all that may come fairly and strictly within the term 'repair.'" " 'Care and keeping,' when used in connection with a trust like this, imply the right to preserve the building in the condition in which it is placed in their custody, to make good the waste and injury to which all buildings, and especially public buildings like a school-house, are subject." A trustee, in purchasing a school site, may agree that the district shall build and repair the entire division fence. A board may bind a district for expenses incurred in securing the location of a highway by its school-house, such expenditures being allowed as "contingent expenses necessary for keeping the schools in operation." A school board cannot create a debt by erecting a school-house. The charter of the St. Joseph (Mo.) board of public schools authorized it to make an annual estimate of the amount of money to be raised for the purpose of building, repairing and furnishing school-houses, and required the county court to cause the same to be levied and collected. It was held that this provision was a limitation upon the power of the board to build school-houses, and that neither this clause nor another empowering the board "to do all lawful acts which may be lawful and convenient to carry into effect the objects of the corporation," authorized the board to create a debt for that purpose and issue bonds for its payment. When the qualified electors of school districts are intrusted with the power to determine what sort of school-houses shall be built and the extent of the expenditure therefor, a school board cannot increase the expenditure and bind the district for its payment. A

board may ratify an informal contract for the erection of a school-house, if it is one they had power to make in the first instance. A contract for the erection of a school-house should be made with reference to the funds in the treasury for that purpose. The district board has no authority to draw orders for the payment of claims so arising on a fund which has been proposed but not raised. A board must provide for the payment of claims justly due and judgments, so far as it can, or the courts will be justified in compelling them to do their duty in the premises. Trustees or equivalent officers may take personal property by bequest for their schools. "Devises or bequests to trustees for the purposes of founding a library or school create legal and valid trusts." Public officers cannot contract with themselves as individuals and cannot act judicially on their own interests. They should not occupy two conflicting offices. It is a violation of a trust for several persons holding together a fiduciary relation to others to contract with one or more of their own number in matters relating to such trust. The members of a school board being both public officers and trustees of school property, a contract between it and one of its members for the building of a school-house is voidable in equity by the district. It should not employ one of its number to oversee the completion of a school-house abandoned by the contractor. Public policy will not allow property held in trust by committees for public school purposes to be taken in execution at the suit of a creditor.

SAME. GENERAL LIABILITY.

SECTION 21. School officers are not personally and individually liable for the violation of contracts made in the course of their official duty. Where trustees had violated their contract with a teacher the court said,

“that the mere violation of the contract by the trustees in their official capacity, which they had entered into for the corporation, did not render them personally and individually liable.” Being public officers, and contracting as such, they are not personally responsible, it being the law that public officers are not liable on any contract they may make within the line of their duty. Suit will not lie against an unincorporated board of subdirectors. An agreement signed by directors in an official capacity and attested by their secretary does not bind the directors as individuals and is binding upon the district. School officers, in matters requiring the exercise of discretion, are not answerable in damages for honest errors in judgment. In Massachusetts it has been said that ordinarily school officers are not accountable to individuals who may be aggrieved for the manner in which they exercise their public functions.

In Missouri the court said: “School directors are elected by the people, receive no compensation for their services, are not always or frequently men who are thoroughly informed as to the best modes of conducting schools. They are authorized, and it is their duty, to adopt reasonable rules for the government and management of the school, and it would deter responsible and suitable men from accepting the position if held liable for damages to a pupil expelled under a rule adopted by them under the impression that the welfare of the school demanded it, if the courts should deem it improper.”

In an Illinois case the court said: “A mere mistake in judgment, either as to their duties under the law or as to facts submitted to them, ought not to subject such officers to an action. They may judge wrongly, and so may the court or other tribunal, but the party complaining can have no action when such officers act in good faith and

in the line of what they think is honestly their duty. Any other rule might work great hardship to honest men who, with the best of motives, have faithfully endeavored to perform the duties of these inferior offices. Although of the utmost importance to the public, no considerable emoluments are attached to these minor offices, and the duties are usually performed by persons sincerely desiring to do good for their neighbors without any expectation of personal gains; and it would be a very harsh rule that would subject such officers to an action for damages for every mistake they may make in the honest and faithful discharge of their official duties as they understand them." It is not in the line of duty for trustees to refuse a person expelled from a school the quiet enjoyment of an exhibition held by a literary society of the school in the school building. In charging the jury in such a case the judge gave an instruction that "to say that a student expelled from a school for disobedience to some municipal regulation should be excluded from attending a prayer meeting or public lecture in the school-house or college premises for all time to come, without any evidence of improper conduct or suspicion of improper purposes, would be an exercise of tyranny over his private rights not vested in the trustees, directors or professors of our educational institutions." If a committee use violence in dispossessing a teacher, the person or persons so doing are individually liable.

SAME. LIABILITIES FOR NEGLIGENCE.

SECTION 22. A school board is not liable in its corporate capacity for negligence in the discharge of its official duty in the erection and maintenance of a common school building.

In the case cited the court, in an opinion by Judge Ashburn, said: "Owing to the very limited number of

corporate powers conferred on them, boards of education rank low in the grade of corporate existence, and hence are properly denominated *quasi*-corporations. This designation distinguishes this grade of corporations from municipal corporations, such as cities and towns acting under charters or incorporating statutes, which are vested with more extended powers and a larger measure of corporate life. This superior grade, from the nature of their organization, benefits received, and power to raise needed funds, are held responsible by the common law for private personal injuries caused by their own negligence or that of their servants, whilst the inferior grade of public *quasi*-corporations are liable for damages resulting from their negligence only where made so by express legislation. This grade includes the defendant [board of education]. It possesses but limited powers and small corporate life; a corporation in some sense political, but in no sense a municipal corporation." A different line of argument has been taken in New York, substantially as follows: In addition to being a governmental agency a board of education is also a corporation. This being so the courts have held it responsible for its own contracts; being subject to such obligations, it is difficult to see why it should not be liable to an action for the neglect of a duty imposed upon it by law. When it is specially incorporated it must be so; for in that way it is raised from a *quasi* into a responsible corporation. Its members become the living agents through which the corporation manifests itself, exercises its powers, and is liable for neglects. Thus the law stands in New York that a specially incorporated board of education is liable for negligence in the performance of its duties. As to what would constitute negligence in permitting a hole in the school-house floor to remain open, Judge Folger, in a

case already cited, said: "If, in the proper discharge of their duty, they had gone to the building, and, looking for defects threatening immediate danger, had found this hole, then they would have had actual and personal knowledge of it, and would have been in fault if having public means to do it they had not amended it. If so going they had made so careless an inspection as not to see what was so plain, then they would have been faulty. If they did not go at all and took no heed of the liability to danger from the general and particular defects of a building in their charge, which they kept open for the use of many people, then they egregiously failed in doing their duty."

TREASURER.

SECTION 23. The reception of a treasurer's bond by the board of education is a sufficient approval of him. He may not receive for school moneys anything which the law has not authorized to be so received, and if he does so and receipts for taxes on that account he must make good the amount. He is the only proper custodian of school moneys. His liability is absolute for all funds which come into his hands in his official capacity, regardless of the cause of, or circumstances attending, loss. He is not entitled to credit for sums paid to a township in excess of the funds received for it. The failure of a bank where he had deposited funds does not release him, though he was not guilty of any want of care or prudence in failing to ascertain its financial condition. The school district has no authority to release him from liability for money lost or misapplied by him. A stipulation in his bond against liability for non-performance occasioned by inevitable accident does not protect him or his sureties. The liability of a township treasurer is distinct from his ordinary liability for township moneys, and he cannot be

released from duties or any way affected by the action of the township board. In an Iowa case, the court commented on the necessity of a strict compliance with the terms of the bond of a treasurer, as follows: "He is bound by the obligation of the bond, not to exercise due care and diligence in the discharge of this duty, but to perform it absolutely, without conditions or exceptions. He is to hold the money of the district. This is the provision of the law. His contract, expressed in the bond, binds him to the discharge of this duty. He will not be relieved from the contract by showing any degree of diligence or care which falls short of absolute compliance with the terms of his contract. His liability rests upon the conditions of his bond, and if by them he is required to do an act which, without his fault, becomes impossible on account of anything occurring subsequently to the contract, he will not be released. These rules are applicable to all contracts, and the public interest demands that, at this day, when public funds in such vast amounts are committed to the custody of such an immense number of officers, they should not be relaxed when applied to official bonds. A denial of their application in such cases would serve as an invitation to delinquencies, which are already so frequent as to cause alarm."

HIGH SCHOOLS.

SECTION 24. A decision sustaining the right of a school district to levy taxes for the support of a high school in which ancient and modern languages were taught was rendered in Michigan not long ago. In giving the opinion of the court, Judge Cooley said: "Neither in our State policy, in our constitution, nor in our laws, do we find the primary school districts restricted in the branches of knowledge which their officers may cause to be taught, or the grade of instruction that may be given,

if their voters consent in regular form to bear the expense and raise the taxes for the purpose." In Illinois it has been decided that the high school is a legitimate part of the system of schools established by virtue of a clause in the constitution which says: "The general assembly shall provide a thorough and efficient system of free schools, whereby all the children of this State may receive a good common school education." The court remarked: "While the constitution has not defined what a good common school education is, and has failed to prescribe a limit, it is no part of the duty of the courts of the State to declare by judicial construction what particular branches of study shall constitute a common school education." Similar ground has been taken in Mississippi. If an act proposed to be done by the proper officers in establishing a high school be within the scope of the authority delegated, it is not competent for even a court of equity to interfere with the exercise of discretion given by statute, unless it be clearly shown that the power has been or is about to be corruptly used.

EXPELLING PUPILS FROM SCHOOL.

SECTION 25. "In some cases it is required by the best interests of all the pupils of the school. Irregular attendance of pupils not only retards their own progress, but interferes with the progress of those pupils who may be regular and prompt. The whole class may be annoyed and hindered by the imperfect recitations of one who has failed to prepare his lessons on account of absence. The class must endure and suffer the blunders, promptings, and reproofs of the irregular pupil, all resulting from failure to prepare lessons which should have been studied when the child's time was occupied by direction of the parent in work or visiting.

"Tardiness, that is, arriving late, is a direct injury to

the whole school. The confusion of hurrying to seats, gathering together of books, etc., by tardy ones, at a time when all should be at study, cannot fail to greatly impede the progress of those who are regular and prompt in attendance. The rule requiring prompt and regular attendance is demanded for the good of the whole school."

In the Vermont decision it was said that in case of casual sickness of the scholar; of sickness or death in the family of the scholar; of some impediment, like fire or flood; and in case of various incidents of current life, giving occasion for temporary detention, the enforcement of the penalty of exclusion for unexcused absence would be adjudged to be unauthorized.

SAME.

SECTION 26. A rule which excludes from school a pupil for failure to pay for injuries accidentally done the school-house is not authorized by a clause permitting suspension of a pupil for a breach of discipline or an offence against good order. The court said: "The State does not deprive its citizens of their property, or their liberty, or any of their rights except as a punishment for a crime. It would be very harsh and obviously unjust to deprive a child of education for the reason that through accident and without intention of wrong he destroyed property of the school district. Doubtless a child may be expelled from school as a punishment for breach of discipline or for offences against good morals, but not for innocent acts." A rule that would bar the doors of a school-house against little children, who come a great distance in cold, winter weather, for no other reason than that they are a few minutes tardy, is unreasonable and therefore unlawful.

SUSPENSION OF PUPILS IN THE ABSENCE OF RULES.

SECTION 27. The law governing the suspension of

pupils by a teacher in cases where no rule requiring it exists has been clearly stated recently in Wisconsin in an opinion by Judge Lyon, from which the following extended quotation is taken: "While the principal or teacher in charge of a public school is subordinate to the school board or board of education of his district or city, and must enforce rules and regulations adopted by the board for the government of the school, and execute all its lawful orders in that behalf, he does not derive all his power and authority in the school and over his pupils from the affirmative action of the board. He stands for the time being *in loco parentis* to his pupils, and, because of that relation, he must necessarily exercise authority over them in many things concerning which the board may have remained silent. In the school, as in the family, there exist on the part of the pupils the obligations of obedience to lawful commands, subordination, civil deportment, respect for the rights of other pupils, and fidelity to duty. These obligations are inherent in any proper school system, and constitute, so to speak, the common law of the school. Every pupil is presumed to know this law, and is subject to it whether it has or has not been re-enacted by the district board in the form of written rules and regulations. Indeed, it would seem impossible to frame rules which would cover all cases of insubordination and all acts of vicious tendency which the teacher is liable to encounter daily and hourly. If the offender is incorrigible, suspension is the only remedy,





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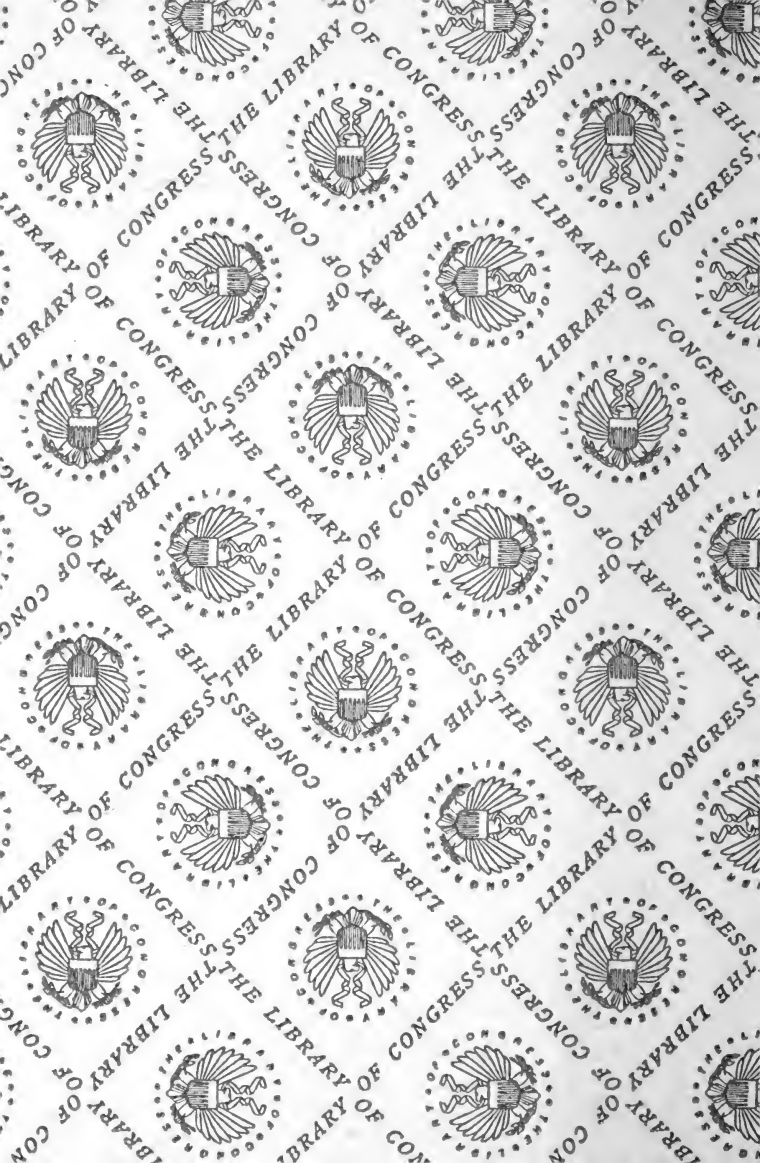
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